

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

Y 4. B 22/3: S. HRG. 104-869/
V. 13

Investigation of Whitewater Develop...

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

SECOND SESSION

VOLUME XIII

ON

**THE INQUIRY INTO WHETHER IMPROPER CONDUCT
OCCURRED WITH RESPECT TO THE OPERATION,
INVESTMENTS, AND ACTIVITIES OF WHITEWATER
DEVELOPMENT CORPORATION, MADISON GUARANTY
SAVINGS & LOAN, CAPITAL MANAGEMENT
SERVICES, AND RELATED MATTERS**

FEBRUARY 14, 15, AND 22; APRIL 24, 25, AND 30;
MAY 1, 7, 8, 9, 14, 15, 16, AND 17; JUNE 5 AND 11, 1996

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



APR 02 1996

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

HEARINGS

BEFORE THE

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

SECOND SESSION

VOLUME XIII

ON

**THE INQUIRY INTO WHETHER IMPROPER CONDUCT
OCCURRED WITH RESPECT TO THE OPERATION,
INVESTMENTS, AND ACTIVITIES OF WHITEWATER
DEVELOPMENT CORPORATION, MADISON GUARANTY
SAVINGS & LOAN, CAPITAL MANAGEMENT
SERVICES, AND RELATED MATTERS**

FEBRUARY 14, 15, AND 22; APRIL 24, 25, AND 30;
MAY 1, 7, 8, 9, 14, 15, 16, AND 17; JUNE 5 AND 11, 1996

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



U.S. GOVERNMENT PRINTING OFFICE

41-383 CC

WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055512-4

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS

ALFONSE M. D'AMATO, New York, *Chairman*

RICHARD C. SHELBY, Alabama
CHRISTOPHER S. BOND, Missouri
CONNIE MACK, Florida
LAUCH FAIRCLOTH, North Carolina
ROBERT F. BENNETT, Utah
ROD GRAMS, Minnesota
PETE V. DOMENICI,* New Mexico
ORRIN G. HATCH, Utah
FRANK H. MURKOWSKI, Alaska

PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
JOHN F. KERRY, Massachusetts
RICHARD H. BRYAN, Nevada
BARBARA BOXER, California
CAROL MOSELEY-BRAUN, Illinois
PATTY MURRAY, Washington
PAUL SIMON, Illinois

HOWARD A. MENELL, *Staff Director*

ROBERT J. GIUFFRÀ, JR., *Chief Counsel*

PHILIP E. BECHTEL, *Deputy Staff Director*

STEVEN B. HARRIS, *Democratic Staff Director and Chief Counsel*

MICHAEL CHERTOFF, *Special Counsel*

RICHARD BEN-VENISTE, *Democratic Special Counsel*

ALICE S. FISHER, *Deputy Special Counsel*

LOUIS J. GICALE, *Deputy Special Counsel*

EVERETT C. JOHNSON, JR., *Deputy Special Counsel*

JAMES B. COMEY, *Deputy Special Counsel*

NEAL E. KRAVITZ, *Democratic Principal Deputy Special Counsel*

LANCE COLE, *Democratic Deputy Special Counsel*

STEVEN BANKLER, *Investigative Accountant*

H. CHRISTOPHER BARTOLOMUCCI, *Associate Special Counsel*

GABRIEL BERG, *Democratic Legal Intern*

JULIUS J. BONAVOLANTA, *Special Investigator*

MARK J. BRENNER, *Assistant Special Counsel*

ROBERT H. BUCHANAN, *Staff Intern*

DAVID CARLE, *Democratic Press Secretary*

WILLIAM S. CASTLE, *Senior Investigator*

LORI A. CONLON, *Administrative Assistant*

VINCENZO A. DELEO, *Special Investigator*

VIET D. DINH, *Associate Special Counsel*

DOUGLAS A. EPSTEIN, *Democratic Counsel*

CHRISTOPHER FARRO, *Staff Intern*

STEVEN H. FROMEWICK, *Democratic Assistant Special Counsel*

SOPHIA HARDY, *Democratic Intern*

NGUYEN-HONG HOANG, *Democratic Legal Intern*

DAVID KAUFMAN, *Staff Intern*

DAVID M. LUNA, *Democratic Law Clerk*

JOSEPH MITCHELL, *Staff Intern*

TIMOTHY P. MITCHELL, *Democratic Professional Staff Member*

MICHAEL P. O'CALLAGHAN, *Associate Special Counsel*

RICHARD J. O'CONNELL, *Special Investigator*

JAMES S. PORTNOY, *Democratic Associate Special Counsel*

JAMES F. REDFERN, *Special Investigator*

ANDREW M. SCHAUER, *Democratic Assistant Special Counsel*

JENNIFER M. SWARTZ, *Senior Investigator*

MEGAN H. TINKER, *Senior Investigator*

AMY R. WENDT, *Democratic Staff Assistant*

JEFFREY H. WINTER, *Democratic Special Assistant*

STEPHANIE H. WOMACK, *Democratic Special Assistant*

* Appointed to replace Senator Bill Frist pursuant to S. Res. 184 (October 12, 1995).

III

PETER C. BARRETT, *Staff Assistant*
Yael BELKIND, *Democratic Staff Assistant*
SLOAN DEERIN, *Staff Assistant*
MITCHELL FEUER, *Democratic Counsel*
EMILY L. FRYDRYCH, *Assistant to the Democratic Staff Director*
MARTIN J. GRUENBERG, *Democratic Senior Counsel*
MARK D. HOFFMAN, *Executive Assistant to the Staff Director*
GLENN IVEY, *Democratic Counsel*
JOSEPH A. JIAMPINETRO, *Counsel*
JOSEPH R. KOLINSKI, *Chief Clerk/Computer Systems Administrator*
ANDREW LOWENTHAL, *Democratic Professional Staff Member*
DORIS R. MAHONEY, *Executive Assistant*
CHARLES MARR, *Democratic Professional Staff Member*
E. RICHARD MILLS, *Press Secretary*
JOSEPH N. MONDELLO, JR., *Counsel*
PATRICK A. MULLOY, *Democratic Chief International Counsel*
DOUGLAS R. NAPPI, *Counsel*
LENDEL PORTERFIELD, *Financial Institutions Subcommittee Staff Director*
AMY C. RANDEL, *Democratic Staff Assistant*
SARAH BLOOM RASKIN, *Democratic Counsel*
MADELYN SIMMONS, *Professional Staff Member*
PAUL WEECH, *Professional Staff Member*
EDWARD M. MALAN, *Editor*
GEORGE E. WHITTLE, *Editor*
IRENE C. WHISTON, *GPO Editorial Assistant*
DONNA LEE KRAUSE, *GPO Editorial Assistant*

7
I
I
I
E
D
D
D
D
P
I
L
L
I
I
D
D
T
T
T
T

CONTENTS

VOLUME XII

THURSDAY, JANUARY 11, 1996

	Page
Opening statement of Chairman D'Amato	1
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	4
Senator Simon	5
Senator Dodd	20
Senator Moseley-Braun	26
Senator Mack	29
Senator Shelby	45
Senator Bennett	48
Senator Hatch	69

WITNESS

Richard N. Massey, Attorney, Rose Law Firm	5
--	---

APPENDIX

Transcript of Video Press Conference of First Lady Hillary Rodham Clinton, dated April 22, 1994	29
Document DKSX 000767	109
Document DKSX 000800	110
Interview, Office of Investigations, Office of Inspector General, Participants: Hillary Rodham Clinton and David E. Kendall	111
Document DKSX 028934	116
Document DKSX 028928	117
Document DKSX 028962	118
Documents RLF2 03030-03031	119
Pillsbury Madison & Sutro Supplemental Report for the RTC, dated Decem- ber 13, 1995	121
Interview of John Latham by the RTC/OIG, dated July 16, 1995	213
Letter from David E. Kendall to Senator D'Amato, dated January 8, 1996	218
Interview of Richard N. Massey by the FDIC, Office of Inspector General	222
Interview of Richard N. Massey by the RTC, Office of Inspector General	226
Document DKSX 028943	239
Document DKSX 028960	240
Document RS 000537	241
Document 0000084	242
Document RS 000381	243

TUESDAY, JANUARY 16, 1996

Opening comments of Chairman D'Amato	245
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	246
Senator Bond	271

	Page
Opening statements, comments, or prepared statements of—Continued	
Senator Simon	274
Senator Murray	288
Senator Mack	293
Senator Faircloth	319

WITNESSES

William H. Kennedy, III, Attorney, Rose Law Firm	246
Bruce R. Lindsey, Deputy Counsel and Assistant to the President	247
W. Neil Eggleston, Partner, Howrey & Simon, Former Associate Counsel to the President	247

APPENDIX

Documents S 012517–012538	367
Fax from John Spotila to Neil Eggleston, dated November 16, 1993	389
Document S 011399	390
Letter from John Spotila to Neil Eggleston, dated November 16, 1993	391
Document S 012604	392
GAO Questions for Mrs. Clinton	393
Letter and Response to GAO Questions for Mrs. Clinton from Neil Eggleston to Nancy Kingsbury, dated April 6, 1994	394
The New York Times, Anthony Lewis, dated January 15, 1996	396
Chronology of Events, DEK, November 10, 1993	397
Document S 012599	404
Bruce Lindsey's Notes of Conversation with Jim Blair	405
Document 10255	407
Documents S 012595–012596	408
Documents S 012597–012598	410
Documents 0000149–0000167	412
The Wall Street Journal, Editorial, dated January 12, 1996	431
The Boston Sunday Globe, Thomas Oliphant, dated January 14, 1996	433
Interview of John Latham by the RTC/IG, page 1	434

THURSDAY, JANUARY 18, 1996

Opening comments of Chairman D'Amato	435
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	448
Senator Faircloth	453
Senator Mack	456
Senator Bond	463
Senator Murray	488

WITNESSES

Carolyn Huber, Special Assistant to the President	435
---	-----

AFTERNOON SESSION

Ronald Clark, Chief Operating Officer, Rose Law Firm	470
--	-----

APPENDIX

Deposition Exhibit 1, Carolyn Huber	521
Document DKS N 028928	522
Document DKS N 028934	523
Document DKS N 028980	524
Document DKS N 029010	525
Majority Summary Chart, January 30, 1996	526
Document DKS N 029011	527
Document RS 000381	528
Documents RLF 1 03182–03183	529

VII

	Page
Letter from Jim McDougal to Seth Ward, dated September 3, 1985	531
Document DKS 028979	532
Document DKS 029008	533
Document DKS 029002	534

TUESDAY, JANUARY 23, 1996

Opening comment of Chairman D'Amato	535
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	538
Senator Murkowski	564
Senator Boxer	567
Senator Shelby	572
Senator Kerry	576

WITNESS

William C. Lyon, Former Member, Arkansas State Bank Board	535
---	-----

APPENDIX

Documents DKS 013314-013315	585
Documents VCH 000367-000373	587
Letter from Gary Bunch to Marlin Jackson, dated June 5, 1984	594
Letter from Marlin Jackson to Charles Campbell, dated November 1, 1985	595
Document DKS 026346	596
Letter from James McDougal to Betsey Wright, dated December 12, 1984	597
Examination Classification of Madison Bank and Trust Company	598
Deposition of William Cain Lyon, page 61	599
Document MG 0000759	600
Document DKS 025966	601

THURSDAY, JANUARY 25, 1996

Opening statement of Chairman D'Amato	603
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	604
Senator Bond	627
Senator Dodd	631
Senator Moseley-Braun	633
Senator Mack	634
Senator Simon	638
Senator Murkowski	648

WITNESSES

Beverly Bassett Schaffer, Esquire, Former Commissioner, Arkansas Securities Department	606
William B. Brady, Former Attorney, Arkansas Securities Department	606
Charles Handley, Assistant Commissioner, Arkansas Securities Department ..	606

APPENDIX

Document CCBW-884	715
Documents CCBW-885-887	716
Documents RLF2 03062-03063	719
The American Banker article, dated November 4, 1985	721
Document DKS 026305	722
Document 00000084	723
Letter from Beverly Bassett to Hillary Rodham Clinton, dated May 14, 1985 ..	724

VIII

	Page
Letter from Hillary Rodham Clinton to Jim McDougal, dated May 23, 1985	725
Document RS 000648	726
Memo to File of John Mitchell, Re: Madison Guaranty S&L, April 3, 1985	727
Document S-KR03131	729
Board of Directors Meeting, FHLBB, dated July 11, 1986	730
Document RLF1 03186	738

TUESDAY, JANUARY 30, 1996

Opening statement of Chairman D'Amato	739
Opening statements, comments, or prepared statements of:	
Senator Murray	740
Senator Sarbanes	740
Senator Dodd	744
Senator Mack	763
Senator Murkowski	772

WITNESSES

James T. Clark, Former Bank Examiner, Federal Home Loan Bank Board, Sixth Federal Home Loan Bank District, Indianapolis, Indiana	742
Dawn Pulcer, Former Bank Examiner, Federal Home Loan Bank Board of Indianapolis in Detroit, Michigan	743

APPENDIX

James T. Clark's Examination Report—Summary	806
Document DKSJ 028962	809
James T. Clark's List of Potential Insiders	810
House Testimony of James T. Clark, pages 212 & 287	811
Memo to File of John Mitchell, Re: Madison Guaranty S&L, April 3, 1985	813
Pillsbury Madison & Sutro General Report for the RTC, dated December 28, 1995	815
Document CCBW-884	831
Personal Notes of Dawn Pulcer, Re: July 11 FHLBB Meeting, Supervision and Madison Guaranty S&L Board	832
Document DKSJ 029010	849

WEDNESDAY, JANUARY 31, 1996

Opening comments of Chairman D'Amato	851
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	864
Senator Bond	878
Senator Grams	884
Senator Murkowski	889
Senator Faircloth	896

WITNESSES

Bobby J. Nash, Director of Presidential Personnel and Assistant to the Presi- dent of the United States; Former Senior Executive Assistant for Economic Development, Little Rock, Arkansas	851
Davis Fitzhugh, Former Vice President of Madison Guaranty Savings & Loan, Little Rock, Arkansas	851

AFTERNOON SESSION

Darrell D. Dover, Attorney, House, Wallace, Nelson & Jewell, Little Rock, Arkansas, Represented Industrial Development Company [IDC]	926
---	-----

Richard T. Donovan, Attorney, Rose Law Firm, Little Rock, Arkansas	Page 926
Thomas P. Thrash, Attorney, Rose Law Firm, Little Rock, Arkansas	926

APPENDIX

Document 071997	987
Document 071996	988
Davis Fitzhugh's Commission Check for \$50,000, dated November 1, 1985	989
Document 0000091	990
Bruce Lindsey's Notes	991
Document MG 0000797	992
Documents SW1-005-006	993
Memo from David Williams to Vincent Foster, dated November 20, 1986	995
Document 029011	997
Document 029010	998
Majority Chart, Summary IDC, January 30, 1986	999
Majority Chart, Hillary Clinton's IDC Billings	1000
Majority Chart, Rose Law Firm IDC Billings	1001
Memo from Richard Donovan to Hillary Clinton, dated January 3, 1986	1002
Memo from Jim McDougal to Jim Guy Tucker, dated February 7, 1986	1003
Handwritten Memo from Hillary Clinton to Richard Donovan	1004
Memo from Richard Donovan to Hillary Clinton, dated February 17, 1986	1005
Document 029013	1017
Document 029016	1018
Memo from Richard Donovan to Hillary Clinton, dated March 4, 1986	1019
Voucher 4391	1023
Voucher 4372	1024
Document 029008	1025
Draft Agreement, dated August, 1985	1026
Document 028979	1033
Letter from Thomas Thrash to Darrell Dover, dated August 9, 1986	1034
Document 029002	1039
Draft Agreement, dated August 19, 1985	1040
Draft Agreement, dated September 13, 1985	1047
New Client Master Form	1052
Option to Purchase Real Estate	1053

THURSDAY, FEBRUARY 1, 1996

Opening comment of Chairman D'Amato	1059
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	1068
Senator Dodd	1074
Senator Boxer	1080
Senator Bond	1091
Senator Murkowski	1096

WITNESS

Susan Strayhorn, Former Secretary, Madison Financial Corporation	1059
--	------

APPENDIX

Figure 2—Property Deposition Map	1106
Documents SW1-008-009	1107
Documents SW1-005-006	1109
Document SW1-007	1111
Interview by Office of Investigations, Office of Inspector General, Participant:	
Martha Patton	1112
Documents SEN 32910-32918, John Latham	1114
Document SEN 32828, Seth Ward	1123
Documents SW1-070-074	1124
Letter from Susan Strayhorn to April Breslaw, dated January 25, 1990	1129

TUESDAY, FEBRUARY 6, 1996

Opening comment of Chairman D'Amato	1131
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	1141
Senator Shelby	1150
Senator Kerry	1154
Senator Dodd	1156
Senator Faircloth	1157
Senator Moseley-Braun	1159

WITNESSES

Steven A. Switzer, Deputy Inspector General for Audit, Office of Inspector General, Federal Deposit Insurance Corporation	1131
Patricia M. Black, Assistant Inspector General for Inspections and Legal Support, FDIC; Former Counsel to the Inspector General, Resolution Trust Corporation	1132

APPENDIX

Letter from Richard Massey to Beverly Bassett, dated June 17, 1985	1204
Document DKS N 028965	1206
Majority Chart, Hillary Clinton's IDC Billings	1207
Deposition Exhibit 3, Steven A. Switzer	1208
Majority Chart, Rose Law Firm—Attorney Conference Billings	1209
Letter from William Collishaw to James Neal, dated December 29, 1995	1212
Memo from Harold Ickes to The First Lady, dated March 1, 1994	1214
Memo from Neil Eggleston to Harold Ickes, dated February 28, 1994	1215
Document DKS N 029016	1222
Deposition Exhibit 3, Patricia M. Black	1223
Document DKS N 029026	1224
Document DKS N 029008	1225
Document SW1-028	1226
Document DKS N 028980	1227
Memo from April Breslaw to Gerald Jacobs and William Roelle, dated February 26, 1991	1228
Hillary Rodham Clinton's Supplemental Interrogatory, No. 64	1235
Document DKS N 020024	1237
The Washington Post article, August 5, 1995	1238

WEDNESDAY, FEBRUARY 7, 1996

Opening statement of Chairman D'Amato	1241
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	1259
Senator Shelby	1260
Senator Mack	1265
Senator Bennett	1269
Senator Dodd	1271
Senator Faircloth	1281
Senator Bond	1288
Senator Moseley-Braun	1294

WITNESS

Webster L. Hubbell, Former Associate Attorney General, U.S. Department of Justice	1241
---	------

APPENDIX

Documents SEN 22408–22409	1341
April Breslaw's House Testimony, pages 200–201	1343
Documents S 010097–010105	1345

	Page
Document DKSJ 028935	1354
Pillsbury Madison & Sutro Report, December 28, 1995 [12123240]	1355
Pillsbury Madison & Sutro Report, December 28, 1995 [12120070]	1443
Document RS 000381	1466
Document DKSJ 029011	1467
Document GRO 000028	1468
Memo from Mary Russell to Hillary Clinton, dated July 21, 1988	1469

THURSDAY, FEBRUARY 8, 1996

Opening statement of Chairman D'Amato	1471
Opening statements, comments, or prepared statements of:	
Senator Hatch	1483
Senator Sarbanes	1485
Senator Shelby	1496
Senator Simon	1501
Senator Faircloth	1505
Senator Bennett	1512
Senator Grams	1518

WITNESSES

David E. Kendall, Attorney, Williams & Connolly	1471
Jane C. Sherburne, Special Counsel to the President	1471

AFTERNOON SESSION

Capricia P. Marshall, Special Assistant to the First Lady	1535
Gary J. Walters, Chief Usher, The White House	1535
Dennis W. Freemyer, First Assistant Usher, The White House	1535

APPENDIX

Documents S 020431-020433	1553
Deposition of Jane C. Sherburne, pages 15 to 20	1556
Letter from the Special Whitewater Committee to The White House, dated September 6, 1995	1557
Letter from The White House to the Special Whitewater Committee, dated October 23, 1995	1560
The White House, Third Floor	1563
Committee Composite of Book Room	1564
Deposition Exhibit 1, Capricia P. Marshall	1565

TUESDAY, FEBRUARY 13, 1996

Opening comments of Chairman D'Amato	1567
Opening statements, comments, or prepared statements of:	
Senator Simon	1581
Senator Sarbanes	1595

WITNESSES

Nancy Hernreich, Deputy Assistant to the President & Director of Oval Office Operations, Former Scheduling Secretary to the Governor	1567
Sam I. Bratton, Jr., Chairman, Arkansas Public Service Commission, Former Counsel to the Governor	1567

APPENDIX

Document CCBW-884	1625
Memo from Jim Guy Tucker to Mike Wilson, dated February 24, 1987	1626

XII

	Page
Memo from NH to BC, dated April 14	1628
Document DKSJ 018009	1629
Letter from Jim Guy Tucker to Governor Clinton, dated April 24, 1987	1630
Letter from Jim Guy Tucker to Jeffrey Stern, dated April 27, 1987	1632
Documents DKSJ 018011-018012	1633
Memo from Doug Strock to Jerrell Clark, dated April 6, 1987	1635
Memo from Doug Strock to Butch Sullins, Larry Jegley, and Tony Creston, dated January 17, 1985	1636
Documents DKSJ 013314-013315	1638
Memo from Janice Choate to Governor Clinton, dated March 5, 1986	1640
Message Pad by Strayhorn from Hernreich to McDougal, dated January 15	1642
Document DKSJ 013118	1643
Document DKSJ 013154	1644

VOLUME XIII

WEDNESDAY, FEBRUARY 14, 1996

Opening comments of Chairman D'Amato	1645
Opening statements, comments, or prepared statements of:	
Senator Simon	1663
Senator Sarbanes	1669
Senator Dodd	1672
Senator Faircloth	1675

WITNESSES

Alston Jennings, Sr., Former Partner, Wright, Lindsey & Jennings	1645
Helen Dickey, White House Database Administrator, Former Staff Assistant in the Social Office	1646

APPENDIX

Document S 020085	1687
Document S 020557	1688
Document S 020561	1689
The White House, Third Floor	1690
Documents SEN 30383-30384	1691
Documents SW1-005-007	1693
Documents SW1-070-074	1696
Deposition of Seth Ward's Pre-Trial Arkansas, pages 83-84	1701
Letter from Alston Jennings to Viet D. Dinh, dated February 9, 1996	1703
The Washington Post article, dated February 9, 1996	1704
Majority Charts 1 & 2	1705
Document SEN 33176	1707
Majority Chart 3	1708

THURSDAY, FEBRUARY 15, 1996

Opening comments of Chairman D'Amato	1709
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	1722
Senator Hatch	1729
Senator Dodd	1736
Senator Grams	1744
Senator Faircloth	1766

WITNESS

Mark D. Gearan, Director, Peace Corps, Former White House Director of Communications	1710
---	------

APPENDIX

Documents S 020564-020583, S 020585	1820
Documents S 020589-020590	1841
Document S 020454	1843
Documents S 020452-20453	1844
Letter from U.S. Department of the Treasury to the Special Whitewater Committee, dated February 9, 1996	1846
Letter from Justin Simon to Brett Kavanaugh, dated January 31, 1996	1849
New York Times article, dated December 20, 1993	1852
RTC/IG Deposition of Mark D. Gearan, page 4	1853
Documents S 020292-020310	1854
Deposition of Mark D. Gearan, pages 23-24	1873
Letter from The White House to the Special Whitewater Committee, dated February 13, 1996	1875
Bruce Lindsey's Notes, page 3	1876
Documents S 020760-020761	1877
Documents S 020448-020450	1879
Document OIC 001030	1882

THURSDAY, FEBRUARY 22, 1996

Opening comments of Chairman D'Amato	1883
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	1885
Senator Hatch	1908
Senator Dodd	1912
Senator Faircloth	1915
Senator Mack	1921
Senator Moseley-Braun	1957

WITNESS

Harold M. Ickes, White House Deputy Chief of Staff	1883
--	------

APPENDIX

Letter from Robert S. Bennett to the Special Whitewater Committee, dated March 25, 1996	1993
Letter from the Special Whitewater Committee to Robert S. Bennett, dated March 26, 1996	1996
Letter and Enclosures from Robert S. Bennett to the Special Whitewater Committee, dated April 18, 1996	1999
Letter from the Special Whitewater Committee to Robert S. Bennett, dated April 22, 1996	2004
Letter from Robert S. Bennett to the Special Whitewater Committee, dated May 3, 1996	2009
Documents S 020783-020786	2011
Documents S 007288-007313	2015
Documents X 001200-001201	2041
Deposition of Harold M. Ickes, July 24, 1994	2043
Documents S 020790-020794	2173
New York Times, Docudrama, Sidney N. Herman, dated January 27, 1996	2179
Documents S 009929-009931	2180
Documents 007301-097303	2183
Documents S 020564-020579	2186
New York Times article, dated December 20, 1993	2202
Documents S 020797-020802	2203
Associate Press article, dated February 9, 1996	2209
Documents S 020884-020889	2212
Documents S 020819-020820	2218
Documents S 009908-009911	2220
Treasury/IG Deposition of Harold M. Ickes, pages 1-8	2224
Document S 020781	2232
Documents 2987-2989	2233
Documents S 020451-020451A	2236

WEDNESDAY, APRIL 24, 1996

Page

Opening statement of Chairman D'Amato	2239
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	2240
Senator Faircloth	2241
Senator Mack	2261
Senator Murkowski	2262
Senator Grams	2282

WITNESSES

Helen (Vowell) Herr, Former Leasing Administrator, Arkansas State Building Services	2241
S. Wooten Epes, Former Executive Director, Arkansas Housing Development Agency	2246
Patricia J. Hays, Former Administrative Assistant & Collections Officer, Madison Guaranty Savings & Loan	2249
Paul Mallard, Former Director, Arkansas State Building Services	2252

AFTERNOON SESSION

Charles J. Peacock, Former Member, Board of Directors, Madison Guaranty Savings & Loan	2288
Gregory M. Hopkins, The Hopkins Law Firm	2288
Lance Randell Miller, Partner, Mitchell, Williams, Selig, Gates & Woodyard ..	2288

APPENDIX

State of Arkansas Lease Agreement with Madison	2316
Letter from Wooten Epes to Helen Vowell (Herr), dated October 5, 1984	2320
Deposition of Helen Herr, page 145	2321
Memo from LM to JSS, dated April 23, 1987	2322
Los Angeles Times article, July 31, 1995	2325
Letter from Wooten Epes to Carl Brooks, dated October 11, 1983	2327
Deposition of Paul Mallard, page 44	2328
Memo from Sue Strayhorn to Davis Fitzhugh, dated December 17, 1985	2329
Memo from Lance Randell Miller to Pat Heritage, dated April 21, 1987	2330
Majority Chart, Listing of Checks receive in 1985 Fundraiser	2331
Cashier's Check No. 2497 from Ken Peacock to Bill Clinton	2332
Cashier's Check No. 2498 from Dean Landrum to Bill Clinton	2333
Cashier's Check No. 2461 from Madison Guaranty to Charles Peacock	2334
Personal Check from Charles Peacock to Madison Guaranty	2335
Madison Guaranty Loan Application signed by Charles Peacock	2336
Personal Check from Charles Peacock to Quapaw Title Company	2337
Memo from Nancy Herrnreich to Governor Clinton, dated April 14	2338
Memo from Jim McDougal to John Latham, dated March 27, 1985	2339

THURSDAY, APRIL 25, 1996

Opening comments of Chairman D'Amato	2341
Opening statements, comments, or prepared statements of:	
Senator Dodd	2355
Senator Sarbanes	2364
Senator Shelby	2393

WITNESS

Betsey Wright, Former Chief of Staff for Governor Clinton; accompanied by Alan M. Cohen, Esq., O'Melveny & Myers, New York, NY	2341
--	------

APPENDIX

Document DKSJ 001244	2445
Document DKSJ 013309	2446

	Page
Document DKSX 002794	2447
Deposition of Betsey Wright, page 320	2448
Cashier's Checks—2496, 2497, 2498	2449
Document DKSX 018008	2452
Deposition of Betsey Wright, pages 153–167	2453
Document DKSX 027487	2456
Document DKSX 027490	2457
Documents DKSX 027531–27534	2458
Documents DKSX 027572–27574	2462
Document DKSX 018184	2465
Document DKSX 027162	2466
Documents DKSX 026484–26485	2467
Document DKSX 026450	2469
Documents DKSX 017642–017643	2470
Document DKSX 017322	2472

TUESDAY, APRIL 30, 1996

Opening comments of Chairman D'Amato	2473
Opening statements, comments, or prepared statements of:	
Senator Mack	2474
Senator Sarbanes	2474
Senator Bennett	2507

WITNESSES

Johnny B. Mitchum, Former Commissioner, Arkansas State Police	2473
Thomas L. Goodwin, Former Director, Arkansas State Police	2473
John W. Myers, Investment Adviser & Actuary hired to analyze Police Radio Underwriting Proposal	2473
Paul B. Young, Jr., Vice President, Public Finance Department, T.J. Raney & Sons	2474

AFTERNOON SESSION

Sam I. Bratton, Jr., Former Counsel to Governor Clinton	2520
Michael J. Gaines, Former Public Safety Liaison to Arkansas State Police for Governor Clinton	2520
Bobby J. Nash, Former Senior Executive Assistant for Economic Development to Governor Clinton	2520

APPENDIX

Document DKSX 017635	2554
Letter from Michael Drake to Paul Young, dated August 21, 1985	2555
Summary Bill from Mitchell, Williams, Selig, Jackson & Tucker to Michael Drake, Lasater & Company, dated March 15, 1985	2556
Document DKSX 018184	2569
Letter from Mitchell, Williams, Selig, Jackson & Tucker to Ed Erxleben, dated May 16, 1985	2570
Deposition of John W. Myers, page 11	2572
Document DKSX 027162	2573
State Police Communications Bid Analysis	2574
Document DKSX 017800	2576
Document DKSX 017636	2577
Deposition of Betsey Wright, page 321	2578
Documents DKSX 027455–027457	2579
Document DKSX 017843	2582
Document DKSX 018182	2583

WEDNESDAY, MAY 1, 1996

Opening comments of Chairman D'Amato	2585
--	------

	Page
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	2602
Senator Bennett	2611
Senator Dodd	2615
Senator Faircloth	2630
Senator Murkowski	2669

WITNESSES

Danny Ray Lasater, Partner, Collins, Locke & Lasater, Lasater & Company Investment Bankers	2585
Michael J. Drake, Senior Vice President, Fixed-Income and Tax-Exempt Securities, Collins, Locke & Lasater	2589

AFTERNOON SESSION

Mort G. Hardwicke, Arkansas Development Finance Authority [ADFA]	2654
George H. Wright, Jr., Arkansas Development Finance Authority [ADFA]	2654
Linda D. Chandler, Former Acting President, Arkansas Development Finance Authority	2654
Charles Stout, Arkansas Housing Development Agency Board Member 1980- 85 and Chairman 1983	2654
S. Wooten Epes, Former President, Arkansas Development Finance Authority [ADFA]	2654

APPENDIX

Memo to File, David Collins Inv., dated October 14, 1986	2692
Letter from Lasater & Company to Governor Clinton, dated February 15, 1985	2696
Documents FBI 00003569-00003590	2698
Document DKS N 026466	2720
Documents DKS N 027455-027457	2721
Document DKS N 026102	2724
Document DKS N 026484	2725
Document DKS N 027572	2726
Document DKS N 026479	2727
Letter from Michael Drake to Paul Young, August 21, 1985	2728
Document DKS N 017635	2729
Document DKS N 026125	2730
Deposition of Barry Spivey, August 9, 1995	2731
Document DKS N 027162	2743
Document DKS N 027453	2744
Minutes AHDA Subcommittee Meeting, February 17, 1983	2745
Minutes AHDA Executive Board Meeting, April 12, 1983	2746
Letter from Gene Wilbourn to Charles Stout, April 28, 1983	2752
Minutes AHDA Special Executive Board Meeting, April 19, 1983	2754
Minutes AHDA Board of Directors Meeting, February 17, 1983	2758
Minutes AHDA Special Board Meeting, August 31, 1983	2763
Documents DKS N 026126-026128	2765

TUESDAY, MAY 7, 1996

Opening statement of Chairman D'Amato	2769
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	2770
Senator Bond	2782
Senator Mack	2785
Senator Simon	2789
Senator Bennett	2791
Senator Dodd	2793
Senator Domenici	2796
Senator Boxer	2798
Senator Murkowski	2803

APPENDIX

Letter from Benito Romano, Willkie Farr & Gallagher to the Special White-water Committee, dated May 3, 1996	2810
Document DKSX 000807	2812
Interrogatory of Hillary Rodham Clinton by the RTC, page 5	2813
Letter from the Special Whitewater Committee to the Office of the Independent Counsel, dated May 1, 1996	2814
Majority Chart, Mrs. Clinton's Billing Records	2815
New York Times, Docudrama, Sidney N. Herman, dated January 27, 1996	2816

WEDNESDAY, MAY 8, 1996

Opening comments of Chairman D'Amato	2817
Opening statements, comments, or prepared statements of:	
Senator Bond	2818
Senator Sarbanes	2820
Senator Simon	2821
Senator Faircloth	2841
Senator Murkowski	2843

WITNESSES

Frank B. Burge, Former Senior Vice President, Citizens Bank & Trust of Flippin, Arkansas	2817
James N. Patterson, Former President, River Valley Bank & Trust of Lavaca, Arkansas	2818
Robert Ritter, Former President, CEO & Director, Citizens Bank & Trust of Flippin, Arkansas	2818
H. Don Denton, Former Senior Vice President & Chief Lending Officer, Union National Bank of Little Rock; Former Senior Vice President & Chief Lending Officer, Madison Guaranty Savings & Loan	2818
Vernon H. Dewey, Former Loan Officer, Citizens Bank & Trust of Flippin/1st Ozark National Bank	2818
Ron A. Proctor, Former Vice President, Citizens Bank & Trust of Flippin/1st Ozark National Bank	2818

APPENDIX

Letter from Office of the Independent Counsel to the Special Whitewater Committee, dated May 3, 1996	2889
Letter from Office of the Independent Counsel to the Special Whitewater Committee, dated May 7, 1996	2890
The Clinton's Personal Financial Statement	2891
Real Estate Appraisal	2893
The Clinton's Loan	2894
Letter from Ron Proctor to Susan McDougal, dated February 24, 1988	2895
Documentation Waiver, dated July 15, 1988	2896
Chris Wade's Affidavit, dated May 11, 1992	2897
Security Release Agreement, dated May 4, 1985	2898
Chris Wade's Loan Agreement, dated May 11, 1992	2900

THURSDAY, MAY 9, 1996

Opening comments of Chairman D'Amato	2903
Opening comments of Senator Sarbanes	2905

WITNESSES

Patsy L. Thomasson, Deputy Assistant to the President & Deputy Director of Presidential Personnel	2903
J. Wesley Strange, Former President & CEO, 1st Ozark National Bank	2935

	Page
Edward M. Penick, Former President, Twin City Bank of North Little Rock and Former Chairman of the Board, 1st Ozark National Bank	2935
Margaret (Davenport) Eldridge, Former Senior Vice President, Twin City Bank of North Little Rock	2935

APPENDIX

Deposition of Patsy L. Thomasson, July 11, 1995, pages 33 & 34	2983
Documents CGE 012286-012294	2986
Documents CGEPR 0563-0564	2995
Mr. Spafford's Handwritten Notes called out by Bernie Nussbaum of contents of Vince Foster's Office	2997
Document F 15, Excerpts of Mr. Foster's Notebook	2998
Letter from Michael J. Drake to Bob Snyder, dated May 30, 1985	2999
Summary Bill from Mitchell, Williams, Selig, Jackson & Tucker to Michael Drake, Lasater & Company, dated March 15, 1985	3000
Deposition of Patsy L. Thomasson, February 23, 1996, page 85	3012
Majority Chronology of 1987 and 1988 Bank Branching Legislation	3013
Document JRTS 00206	3015
Document JRTS 00195	3016
Document CBF 0411	3017
File Notes of Edward M. Penick, Jr., dated May 27, 1986	3018
Document JRTS 00141	3019
Documents CBF 0408-0410	3020
Document CBF 0416	3023
Letter from Hillary Rodham Clinton to J.W. Strange, dated July 13, 1988	3024
Document House W/W Report 9540	3025
Deposition of Ronald A. Proctor, May 2, 1996, pages 55 & 56	3026
Deposition of Vernon H. Dewey, May 3, 1996, pages 28 & 29	3027
Document JRTS 00002	3028
Documents JRTS 00496-00497	3029
Document JRTS 00491	3031
Documents JRTS 00142-00143	3032
Documents JRTS 00204-00205	3034
File Notes of Edward M. Penick, Jr., dated March 14, 1988	3036
Document JRTS 00203	3038
Document RIC 003638	3039

TUESDAY, MAY 14, 1996

Opening comments of Chairman D'Amato	3041
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	3041
Senator Dodd	3059
Senator Faircloth	3060

WITNESSES

Susan P. Thomases, Attorney at Law, Willkie Farr & Gallagher	3041
Patricia Solis Doyle, Special Assistant to the President & Director of Scheduling for the First Lady	3041

APPENDIX

Document CGE 009110	3080
Documents OIC 000417-000418	3081
Blood Sport written by James Stuart, pages 283-285 and 298-299	3083
Testimony of Susan P. Thomases, August 8, 1995, page 76	3088
Majority Charts	3090
Testimony of Susan P. Thomases, August 8, 1995, page 132	3092
Testimony of Susan P. Thomases, December 18, 1995, page 46	3093
Document S020561	3094
Document ST 0000039	3095
Testimony of Susan P. Thomases, July 17, 1995, pages 126-127	3096

XIX

	Page
Document ST 0000023	3098
Document ST 0000043	3099
Document ST 0000046	3100
Document ST 0000047	3101
Document ST 0000036	3102

WEDNESDAY, MAY 15, 1996

Opening comments of Chairman D'Amato	3103
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	3112
Senator Murkowski	3130

WITNESSES

Gaines B. Norton, Jr., Certified Public Accountant	3103
Charles E. James, Accountant	3103

APPENDIX

Videotaped Deposition of William Jefferson Clinton, dated April 28, 1996, pages 58-59 and 60-61	3136
Testimony of Harry Don Denton, May 8, 1996, pages 21-26	3141
Deposition of Paul C. Berry, May 10, 1996, pages 17-34	3147
Document LP 01602	3151
Document LP 00672	3152
Document LP 01547	3153
Interrogatory Responses of William Jefferson Clinton, dated February 4, 1994, pages 1-4	3154
Document LP 00682	3158
Document LP 00659	3159
Document LP 00678	3160

THURSDAY, MAY 16, 1996

Opening comments of Chairman D'Amato	3161
Opening comments of Senator Sarbanes	3163

WITNESSES

John M. Latham, Former CEO & Chairman of the Board, Madison Guaranty Savings & Loan	3161
David A. Knight, Former Partner, Rose Law Firm	3161
Gary W. Bunch, President, Madison Bank and Trust	3162

APPENDIX

Documents DKSJN 800-801	3192
Minutes of Madison Bank and Trust Board Minutes	3194

FRIDAY, MAY 17, 1996

Opening comments of Chairman D'Amato	3195
Opening statements, comments, or prepared statements of:	
Senator Murkowski	3215
Senator Sarbanes	3219
Senator Hatch	3227

WITNESSES

Jay B. Stephens, Pillsbury Madison & Sutro	3196
Charles E. Patterson, Pillsbury Madison & Sutro	3196
Bruce A. Ericson, Pillsbury Madison & Sutro	3197

APPENDIX

Case Plan and Budget from Bruce A. Ericson, Pillsbury Madison & Sutro to Mark Gabrellian, RTC, dated February 16, 1994	3247
Pillsbury Supplemental Report from December 1995, page 7	3256
Diary of Joshua L. Steiner	3257
Majority Chart, Pillsbury Madison & Sutro's Hourly Billing	3259
Majority Chart, Witnesses Not Interviewed by Pillsbury Madison & Sutro	3260
Statement of Mark D. Fabiani, dated May 17, 1996	3261
Testimony of Jean E. Hanson, dated August 1, 1994, pages 160-163	3262
Chicago Sun-Times article, January 21, 1996, Byline: Hillary Clinton	3266
Testimony on May 8, 1996: Frank B. Burge, pages 19 & 20; Robert Ritter, pages 34 & 35; H. Don Denton, pages 65 & 66	3273
Deposition of Paul C. Berry, dated May 10, 1996, page 35	3275
Pillsbury Madison & Sutro Supplemental Report on Madison Guaranty S&L by the Rose Law Firm, dated February 25, 1996	3277

WEDNESDAY, JUNE 5, 1996

Opening statement of Chairman D'Amato	3315
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	3316
Senator Hatch	3317
Senator Bryan	3317
Senator Shelby	3318
Senator Kerry	3319
Senator Faircloth	3323
Senator Mack	3324
Senator Domenici	3325
Senator Murkowski	3327
Senator Bennett	3328
Senator Simon	3332
Senator Dodd	3333
Senator Boxer	3335
Senator Moseley-Braun	3336
Senator Murray	3342

TUESDAY, JUNE 11, 1996

Opening statement of Chairman D'Amato	3347
Opening statements, comments, or prepared statements of:	
Senator Sarbanes	3348
Senator Shelby	3349
Senator Dodd	3350
Senator Domenici	3351
Senator Kerry	3352
Senator Faircloth	3353
Senator Bryan	3355
Senator Grams	3356
Senator Boxer	3356
Senator Bennett	3357
Senator Moseley-Braun	3358
Senator Murray	3359
Senator Murkowski	3360
Senator Simon	3362
Senator Mack	3362
Senator Hatch	3364

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

VOLUME XIII

WEDNESDAY, FEBRUARY 14, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
*Washington, DC.***

The Committee met at 10:20 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Mr. Jennings, Ms. Dickey, please stand to take the oath.

[Whereupon, Alston Jennings, Sr., Former Partner at the Wright, Lindsey & Jennings Law Firm; and Helen Dickey, Database Administrator at the White House, Former Staff Assistant in the Social Office; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Mr. Jennings, you have a statement that you would like to make to the Committee before we start?

Mr. JENNINGS. Yes, sir, I do.

The CHAIRMAN. We would be pleased to receive that statement.

Mr. JENNINGS. I will make it as brief as possible.

The CHAIRMAN. Take your time.

SWORN TESTIMONY OF ALSTON JENNINGS, SR. FORMER PARTNER, WRIGHT, LINDSEY & JENNINGS

Mr. JENNINGS. I have no firsthand knowledge whatsoever concerning Whitewater. I do not know and have never met or talked to James B. McDougal or Susan McDougal. I have never had any contact or connection whatsoever with Madison Guaranty or Madison Financial before September 2, 1987, when I filed a lawsuit against them on behalf of Seth Ward.

I have no firsthand knowledge of any matters concerning the White House Travel Office, the suicide of Vince Foster, any relationship between any lawyer at the Rose Law Firm and Madison

or any billing records with regard to representation of Madison by the Rose Firm.

I had never represented Mr. Ward before he employed me in 1987, to pursue his claim against Madison. I accepted that employment, filed and tried the lawsuit and recovered a judgment in Mr. Ward's favor.

Sometime in 1989, while the judgment in favor of Mr. Ward was being appealed to the Court of Appeals of the State of Arkansas, I cannot fix an exact date from memory, the RTC became a party to the litigation and requested that, since we had represented the FDIC and FSLIC, my firm and I no longer represent Mr. Ward, so I withdrew and have not represented him as his attorney since that time. I have remained a friend of Mr. Ward, and, as such, I give him advice from time to time.

I do not know why I'm here.

The CHAIRMAN. Ms. Dickey, do you have any statement that you would like to make?

**SWORN TESTIMONY OF HELEN DICKEY
WHITE HOUSE DATABASE ADMINISTRATOR
FORMER STAFF ASSISTANT IN THE SOCIAL OFFICE**

Ms. DICKEY. I do not.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Good morning, Mr. Jennings.

Mr. JENNINGS. Good morning.

Mr. GIUFFRA. You are a partner at the Wright, Lindsey & Jennings Law Firm?

Mr. JENNINGS. I am not at the present time. I was.

Mr. GIUFFRA. You were.

Mr. JENNINGS. Yes.

Mr. GIUFFRA. You were counsel to Seth Ward in connection with the *Ward v. Madison* lawsuit?

Mr. JENNINGS. Yes, sir.

Mr. GIUFFRA. Am I correct that Mr. Webster Hubbell recommended that Mr. Ward retain your firm?

Mr. JENNINGS. I believe I've previously testified that that was my impression that he had, although I wasn't sure that was the case.

Mr. GIUFFRA. Mr. Hubbell was Mr. Ward's son-in-law?

Mr. JENNINGS. Yes. Is still.

Mr. GIUFFRA. I think that's right. Do you know why Mr. Ward did not retain the Rose Law Firm?

Mr. JENNINGS. I was told by Mr. Ward that Mr. Hubbell advised him that he had a conflict of interest because of representation of Madison by the Rose Law Firm.

Mr. GIUFFRA. Now, sir, could you briefly describe Seth Ward's claim in the *Ward v. Madison* case.

Mr. JENNINGS. Mr. Ward had contacted the IDC with regard to certain property. Originally, as I understand it, the contact was to see if the IDC would grant an easement across some of the property so that some property that Madison owned south of there would no longer be landlocked.

After ascertaining that the easement would not be granted but that the property was for sale, Mr. Ward then reported that to Mr.

McDougal. All of this now is what Mr. Ward has told me, you understand. I had nothing to do with any of this. Mr. McDougal asked him what they wanted for it, he said \$3 million. And Mr. McDougal said that's too much.

Mr. Ward reported back to the IDC that McDougal wasn't interested at that price. Later, a lesser price was named of \$1,750,000, as I recall, which Mr. Ward took to Mr. McDougal and said this is really a good deal, the property is worth more than that, and Mr. McDougal said would you join with me with Madison in buying the property, and Mr. Ward said yes. In fact, he said if you don't want the deal, I'm going to take it myself.

Mr. GIUFFRA. Then did Mr. Ward enter into an agreement with Mr. McDougal with regard to certain commissions that would be payable to Mr. Ward on the land as it was sold?

Mr. JENNINGS. Yes, sir.

Mr. GIUFFRA. Mr. Ward was to receive 10 percent commission on commercial land and 4 percent on sales of residential property?

Mr. JENNINGS. I think that is correct.

Mr. GIUFFRA. Now at some point later, there was a dispute as to how much money Mr. Ward was owed on those commissions; is that correct?

Mr. JENNINGS. That's correct.

Mr. GIUFFRA. I think that both Madison and Ward agreed that Mr. Ward was owed at least \$300,000?

Mr. JENNINGS. That was what the testimony reflected.

Mr. GIUFFRA. And the issue in contention was whether Mr. Ward was owed more than \$300,000?

Mr. JENNINGS. That's the lawsuit as I presented it.

Mr. GIUFFRA. Madison claimed in its defense that a property called Holman Acres represented Mr. Ward's commission?

Mr. JENNINGS. I don't believe that's accurate, but I think that somebody might interpret some of the testimony of Mr. Latham to be to that effect. I did not so interpret it, but in any event, the jury didn't buy that theory, if that was a theory.

Mr. GIUFFRA. Now during the litigation of the *Ward v. Madison* case, were you aware as to whether Mrs. Clinton had performed any services in connection with the IDC Castle Grande project?

Mr. JENNINGS. I have no knowledge if—absolutely no knowledge if that was the fact.

Mr. GIUFFRA. Were you aware during the trial that Mrs. Clinton had drafted a May 1, 1986 option agreement giving Madison the right to purchase the so-called Holman Acres parcel?

Mr. JENNINGS. I was not aware of it if it is a fact.

Mr. GIUFFRA. You know Mrs. Clinton reasonably well?

Mr. JENNINGS. Yes, I do.

Mr. GIUFFRA. You have litigated a number of cases with Mrs. Clinton?

Mr. JENNINGS. Three, I believe.

Mr. GIUFFRA. You consider Mrs. Clinton to be a fine attorney?

Mr. JENNINGS. Yes, I do.

Mr. GIUFFRA. Since Mr. Clinton became President in January 1993, you've been to the White House on two occasions; right?

Mr. JENNINGS. Actually, I believe it's three.

Mr. GIUFFRA. Three?

Mr. JENNINGS. Yes.

Mr. GIUFFRA. Were these visits all after the death of Vince Foster, which was July 20, 1993?

Mr. JENNINGS. No, one of them is bound to have been before the death of Vince Foster because I saw Vince Foster at the White House on that occasion.

Mr. GIUFFRA. Then there were two visits after Vince Foster's death?

Mr. JENNINGS. That's correct.

Mr. GIUFFRA. During the second visit and the first after Mr. Foster's death, you met with Mrs. Clinton; is that right?

Mr. JENNINGS. Yes, sir.

Mr. GIUFFRA. And the purpose of that visit was to see the White House?

Mr. JENNINGS. Well, primarily, and say hello to Mrs. Clinton.

Mr. GIUFFRA. During that visit, did you discuss with Mrs. Clinton anything relating to the *Ward v. Madison* case?

Mr. JENNINGS. I did not.

Mr. GIUFFRA. Later on in August 1995, did you receive a phone call from a man named David Kendall?

Mr. JENNINGS. I can't remember whether I did or one of my partners did.

Mr. GIUFFRA. That would be Mr. Tisdale?

Mr. JENNINGS. That's correct.

Mr. GIUFFRA. But you ended up having a telephone conversation with Mr. Kendall?

Mr. JENNINGS. I am not sure whether I did or not. We may have communicated through Mr. Tisdale. It's possible that I did but I do not specifically recall the conversation.

Mr. GIUFFRA. Did you have an understanding that Mr. Kendall was the Clintons' attorney with regard to the Whitewater/Madison matters?

Mr. JENNINGS. I knew he was an attorney for the Clintons, yes.

Mr. GIUFFRA. Personal attorney for the Clintons?

Mr. JENNINGS. Yes.

Mr. GIUFFRA. Now was it your understanding that Mr. Kendall wished to speak to you about a writing or some book or article that was to be published that claimed that Mrs. Clinton was not a good attorney?

Mr. JENNINGS. That was the general idea, yes.

Mr. GIUFFRA. Mr. Kendall wanted to speak to you to sort of refute the claims that were going to be made in this book?

Mr. JENNINGS. That's my understanding, yes.

Mr. GIUFFRA. And—

Mr. JENNINGS. I didn't know whether it was a book or what it was. He suggested through Mr. Tisdale that they had anticipated some attack on the First Lady concerning her ability as a lawyer, and I, of course, having had experience, said I would be happy to furnish information to them.

Mr. GIUFFRA. Did Mr. Kendall ask you to take any steps in terms of refuting these charges?

Mr. JENNINGS. I don't recall that he asked me to. I did take some.

Mr. GIUFFRA. What steps did you take, sir?

Mr. JENNINGS. I contacted people that I knew that had experience with Mrs. Clinton as a lawyer and people who were very knowledgeable litigators themselves to see what their opinion was of Mrs. Clinton.

Mr. GIUFFRA. During these initial contacts with David Kendall, do you have any understanding as to why Mr. Kendall was the person who was contacting you and not someone from the White House staff?

Mr. JENNINGS. I understood that he was an attorney for the President and the First Lady.

Mr. GIUFFRA. But he was the attorney—did you understand for Whitewater and Madison matters or just—

Mr. JENNINGS. I don't know whether his representation is limited to that or not, I'm sorry.

Mr. GIUFFRA. Did there come a time when Mr. Kendall asked you to come to Washington to meet with the First Lady?

Mr. JENNINGS. Again, I don't know whether he asked me to or whether I volunteered to, but the meeting did come about.

Mr. GIUFFRA. Now on the date that you went to the White House and met with Mrs. Clinton, you first went to Mr. Kendall's office at the law firm of Williams & Connolly?

Mr. JENNINGS. That's correct.

Mr. GIUFFRA. Then you went to the White House to meet with Mrs. Clinton?

Mr. JENNINGS. Mr. Kendall and I went to the White House together, yes.

Mr. GIUFFRA. If we could put up on the Elmo a document we received from the White House, this is S20085. This is something called a Waves Log, White House Visitors Log, and it indicates that Mr. Kendall arrived at the White House on August 9, 1995, at approximately 3:57 p.m. and he was to visit the First Lady. This particular entry indicates that you arrived on the 10th at the same time, 3:57 p.m., to visit with the First Lady.

We received a letter last night, this was to Mr. Dinh of the Special Committee, from Miriam Nimitz. Let's put up on the Elmo the document bearing Bates number S20557. This record indicates that you visited with Mrs. Clinton on the 9th of August and not the 10th of August. We were advised by the White House late last night that the first record we obtained was from the computer database and, in fact, there was a glitch in the electronic record-keeping which resulted in the appearance of the August 10th entry and that the correct inference that should be drawn and the inference that the White House is drawing is that you went with Mr. Kendall on August 9th and you both went to the White House on that date. Do you have any reason to question that?

Mr. JENNINGS. None whatsoever. When they asked me about a visit on the 10th in my deposition, I believe I told them that since they had a record, that I couldn't quarrel with that date, and I certainly don't quarrel with it now, because I have no independent recollection of the date. I recall the visit but I don't recall the date.

Mr. GIUFFRA. The White House, it seem the Committee—everyone seems to be settling on August 9th as the correct time based on the records.

Mr. JENNINGS. That suits me fine.

Mr. GIUFFRA. Now, sir, prior to the meeting, did you prepare a memo discussing certain cases that you had participated in with Mrs. Clinton?

Mr. JENNINGS. I believe that I prepared a memo that listed three cases in which we had been adversaries, two cases in which I had appeared in court while she was also appearing, although we were not adversaries, and I believe I listed three names of individuals, lawyers, and a judge who would state that Mrs. Clinton was a very able trial lawyer.

Mr. GIUFFRA. Where was this meeting held with Mrs. Clinton and Mr. Kendall, where at the White House?

Mr. JENNINGS. The only thing I remember is that the room we were in was identified as either—I thought it was identified as the War Room during the Administration of President Roosevelt. I now have reason to believe that perhaps he really said it was—I was really told it was the Map Room during the World War II. That's the only thing I know about it.

Mr. GIUFFRA. This meeting lasted approximately 20 minutes to a half hour?

Mr. JENNINGS. That's my recollection. I wouldn't want to say that that was not—was entirely—it could have been more or less. I don't remember that.

Mr. GIUFFRA. To the best of your recollection, sir, what do you recall discussing with Mrs. Clinton during this meeting?

Mr. JENNINGS. I remember discussing the cases that we had tried against each other. I remember specifically discussing the period of a week that we took depositions in London. Other than that, I think our discussion was just a social visit.

Mr. GIUFFRA. Was Mr. Kendall taking notes during this meeting?

Mr. JENNINGS. I haven't the slightest idea. I don't think so.

Mr. GIUFFRA. And again, do you have any understanding as to why Mr. Kendall was present at the meeting instead of perhaps a press person from the White House?

Mr. JENNINGS. That was their choice.

Mr. GIUFFRA. Now during the meeting, was there any discussion of Mr. Ward?

Mr. JENNINGS. None whatsoever.

Mr. GIUFFRA. No discussion of the *Ward v. Madison* case?

Mr. JENNINGS. Not at all.

Mr. GIUFFRA. Do you recall any discussion of Madison Guaranty?

Mr. JENNINGS. None.

Mr. GIUFFRA. Do you recall any discussion of the Whitewater Development Corporation?

Mr. JENNINGS. None.

Mr. GIUFFRA. Do you recall any discussion of an RTC IG report which had been released on August 4, 1995, pertaining to Rose Law Firm's legal work for Madison Guaranty?

Mr. JENNINGS. Absolutely not. The purpose of the visit was to discuss Mrs. Clinton's abilities as a lawyer, and that was what we talked about.

Mr. GIUFFRA. Now do you recall, sir, that in August 1995, there were hearings going on in this room with regard to the Whitewater matter.

Mr. JENNINGS. I'm sure there were but I don't recall it.

Mr. GIUFFRA. Don't recall that. Do you recall any discussion of those hearings during your meeting with Mrs. Clinton?

Mr. JENNINGS. I do not.

Mr. GIUFFRA. Do you recall saying anything to Mrs. Clinton about Whitewater, or this Committee's investigation, or the Independent Counsel?

Mr. JENNINGS. Oh, I am sure I said something to Mrs. Clinton about knowing that she was taking a lot of hits that she didn't deserve and hoping she would keep a stiff upper lip or some words to that effect.

Mr. GIUFFRA. Did Mrs. Clinton say anything to you in reply?

Mr. JENNINGS. She said that she could handle it, something to that effect. I mean, she was—you know, she thanked me for being concerned but she didn't express any concern.

Mr. GIUFFRA. Now after the meeting, did you go back to Mr. Kendall's office?

Mr. JENNINGS. I don't believe so. Well, yeah, I think maybe I did.

Mr. GIUFFRA. During the entire time you were with Mr. Kendall, did he say anything to you about the Madison Guaranty matter?

Mr. JENNINGS. Not that I recall.

Mr. GIUFFRA. Did he ask you any questions about Mr. Ward?

Mr. JENNINGS. Not that I recall.

Mr. GIUFFRA. Now, you're aware, sir, that on January 4, 1996, certain billing records relating to Rose's representation of Madison Guaranty were found in the White House residence?

Mr. JENNINGS. Well, if you mean am I aware, I have seen newspaper stories to that effect, yes.

Mr. GIUFFRA. Following the discovery of those meetings, did Mr. Kendall make efforts to meet with Mr. Ward?

Mr. JENNINGS. You said "those meetings."

Mr. GIUFFRA. Excuse me. Following the discovery of those billing records in January 1996, did Mr. Kendall take steps to visit with Mr. Ward?

Mr. JENNINGS. According to the note, a telephone call from my secretary to Mr. Tisdale's secretary, on January 5, 1996, I advised Mr. Tisdale's secretary, my secretary probably did, that I had a meeting with Mr. Kendall and Mr. Ward on my calendar for January 11.

Mr. GIUFFRA. And Mr. Kendall came to Little Rock to meet with Mr. Ward?

Mr. JENNINGS. He did.

Mr. GIUFFRA. What do you recall about the meeting between Mr. Kendall and Mr. Ward on January 11, 1996?

Mr. JENNINGS. I recall that they discussed the matter of contacts with Mrs. Clinton and asked Mr. Ward about contacts with Mrs. Clinton.

Mr. GIUFFRA. What do you recall Mr. Ward saying to Mr. Kendall about contacts that Mr. Ward had with Mrs. Clinton back in 1985 and 1986?

Mr. JENNINGS. He said he had no recollection.

Mr. GIUFFRA. Did Mr. Kendall show Mr. Ward copies of Rose Law Firm billing records relating to Madison Guaranty?

Mr. JENNINGS. He showed him copies of something. I did not pay much attention to what they were. They very probably were billing records.

Mr. GIUFFRA. Even after seeing those billing records, Mr. Ward did not have any recollection of these conversations?

Mr. JENNINGS. Said he just didn't recall.

Mr. GIUFFRA. Mr. Ward, in all fairness, is an elderly gentleman at this point?

Mr. JENNINGS. We both are.

[Laughter.]

Mr. GIUFFRA. And these matters happened 10 years ago.

Let's put up on the Elmo a document bearing Bates number S 20561. This is another White House entry log. This indicates that Susan Thomases, who has testified previously before the Committee, visited the White House at 3:00 p.m. on August 9th. Do you know Susan Thomases?

Mr. JENNINGS. Yes, I know her. No, wait a minute. No, I don't. Is she from California?

Mr. GIUFFRA. She's from New York City, actually.

Mr. JENNINGS. Yes, I know the Thomases, yes.

Mr. GIUFFRA. She's a lawyer in New York City.

Mr. JENNINGS. Is she? I don't know, go ahead.

Mr. GIUFFRA. But you've met her in the past?

Mr. JENNINGS. I'm sure I have, yes.

Mr. GIUFFRA. Now, you were at the White House at approximately 4:00 p.m. on the 9th and the entry records indicate that Ms. Thomases was there at 3:00 p.m. on the 9th. Do you recall seeing Ms. Thomases at all?

Mr. JENNINGS. No, I do not.

Mr. GIUFFRA. Did Mrs. Clinton mention that Ms. Thomases was at the White House on the 9th?

Mr. JENNINGS. Not to me.

Mr. GIUFFRA. Ms. Dickey, just some questions for you. Now, you lived at the White House in the residence up on the third floor, I believe, from January 1993 until November 1994.

Ms. DICKEY. That's right.

Mr. GIUFFRA. You were working for a time as a Staff Assistant in the Social Office and later you were a Database Administrator?

Ms. DICKEY. That's right.

Mr. GIUFFRA. Would you sometimes use the Exercise Room on the third floor?

Ms. DICKEY. Yes.

Mr. GIUFFRA. Let's put up on the Elmo the map of the third floor of the White House. Room 319 is something called the Book Room?

Ms. DICKEY. That's right.

Mr. GIUFFRA. Could you just describe the Book Room for the Committee.

Ms. DICKEY. To the best of my recollection, the Book Room was used to—it had bookshelves on the walls and it stored books and I know that the videos were stored there. I know there were tables in the center. I don't recall what was on those tables.

Mr. GIUFFRA. In January and February of 1993, you catalogued some of the videos that were in the Book Room?

Ms. DICKEY. That's right.

Mr. GIUFFRA. Who was the person at the White House who primarily used the Book Room?

Ms. DICKEY. I know that Capricia Marshall used it and I know that Carolyn Huber used it.

Mr. GIUFFRA. Do you recall anyone else at the White House using the Book Room?

Ms. DICKEY. I know people had access to the Book Room. I don't know of anyone else that used it on a regular basis.

Mr. GIUFFRA. Mrs. Clinton's office was right next to the Book Room, is that right?

Ms. DICKEY. That's right.

Mr. GIUFFRA. And in order to go to the Exercise Room, you would pass through the Book Room?

Ms. DICKEY. That's right.

Mr. GIUFFRA. In July and August of 1995, I would like to direct your attention to that period because that's the period in which Ms. Huber has testified that—in fact, she found them in August 1995, found the Rose Law Firm billing records, but during the period of July and August 1995, you were frequently on the third floor of the White House residence?

Ms. DICKEY. That's right.

Mr. GIUFFRA. You would sometimes go there in the evenings, on weekdays, and sometimes on weekends during the day?

Ms. DICKEY. That's right.

Mr. GIUFFRA. You were sometimes helping a woman by the name of I think it's Barbara Feinman?

Ms. DICKEY. That's right.

Mr. GIUFFRA. Who was helping Mrs. Clinton with her book?

Ms. DICKEY. Right.

Mr. GIUFFRA. And Ms. Feinman was working out of Mrs. Clinton's office at that point?

Ms. DICKEY. That's right.

Mr. GIUFFRA. You would sometimes enter the residence to visit Chelsea and her friends?

Ms. DICKEY. Yes.

Mr. GIUFFRA. Do you recall entering the Book Room at any time during July and August of 1995?

Ms. DICKEY. I have no independent recollection of that. I think I testified earlier that I did not go in there. However, yesterday April Springfield, who was an Intern for the Social Office, received a subpoena and came up and was a little upset about it, and, you know, started going over in her mind what had happened, and she told me that on her first day, which was August 6, that I—she was a little nervous about being on the third floor and I gave her a tour which included the Exercise Room, but I do not remember that.

Mr. GIUFFRA. You were up on the third floor of the White House in July and August of 1995. Who did you see enter the Book Room during that time?

Ms. DICKEY. No one that I remember.

Mr. GIUFFRA. You've previously seen these Rose Law Firm billing records that were found at the White House?

Ms. DICKEY. Yes, I have.

Mr. GIUFFRA. They were shown to you at your deposition?

Ms. DICKEY. That's right.

Mr. GIUFFRA. Now prior to your deposition, had you ever seen these billing records at the White House?

Ms. DICKEY. Not that I remember.

Mr. GIUFFRA. So you never saw the billing records in the Book Room?

Ms. DICKEY. Not that I remember.

Mr. GIUFFRA. You never saw these billing records anyplace else in the entire White House complex?

Ms. DICKEY. Not that I remember.

Mr. GIUFFRA. Mr. Jennings, when you were at the White House on August 9th, you never saw these billing records; correct?

Mr. JENNINGS. No, sir, I did not.

Mr. GIUFFRA. Mr. Jennings, if we could go back to the *Ward v. Madison* case, am I correct that there were three agreements that Mr. Ward entered into with Madison, three iterations?

Mr. JENNINGS. There were three separate documents, yes.

Mr. GIUFFRA. The first agreement did not correctly state the oral agreement that had been reached by Mr. McDougal and Mr. Ward; is that right?

Mr. JENNINGS. According to Mr. Ward, they did not.

Mr. GIUFFRA. If we could put up on the Elmo Senate 30383 to 84, this was the second letter agreement, which was dated September 24, 1985. This represents the agreement between McDougal and Ward with regard to the IDC property and what Mr. Ward's compensation would be; correct?

Mr. JENNINGS. I can't tell for sure because I can't read it. If this is the second—

Mr. GIUFFRA. Someone is going to bring you a copy.

Mr. JENNINGS. Thank you.

This appears to me to have been the second agreement and was not the one that we sued on.

Mr. GIUFFRA. Now let's put up the third agreement, which is also dated September 24, 1995. What, sir, was the difference between the two letters?

Mr. JENNINGS. If I may have a copy, I can't read that.

Mr. GIUFFRA. We're having someone bring it right down to you.

Mr. JENNINGS. I understand. Thank you, sir.

It appears at first glance that the principal difference was that it makes reference to the 22½ acres located in the part of the northeast quadrant and so forth.

Mr. GIUFFRA. That's the Holman Acres property?

Mr. JENNINGS. Correct.

Mr. GIUFFRA. Who typed this third agreement, do you know?

Mr. JENNINGS. I do not know. I know from the testimony of Sue Strayhorn that she typed the first one at the request of Mr. Ward and I believe that's Mr. Ward's recollection. I do not know who typed the second or third one. I have information secondhand that this one was probably typed, this one or the second one was probably typed by—excuse me, was probably typed by Mr. Hubbell's secretary.

Mr. GIUFFRA. That was something you'd been told by Mr. Ward?

Mr. JENNINGS. No. I hadn't been told at the time. This is something that I learned within, you know, the last month or so. I didn't

have any idea at the time of the lawsuit who had typed the last, the third document.

Mr. GIUFFRA. Let's put the option up on the Elmo, which is S 170 through S 174.

Mr. JENNINGS. I'm fairly familiar with that document.

Mr. GIUFFRA. Were you aware there were two versions of the option agreement, one reflected 6½ acres and then the second version of the option agreement reflected the entirety of the Holman Acres property?

Mr. JENNINGS. I learned that for the first time when my deposition was taken, I was quite surprised by that.

Mr. GIUFFRA. The option was never exercised; correct?

Mr. JENNINGS. Was not.

Mr. GIUFFRA. Did you consider the option to be an important piece of evidence at trial?

Mr. JENNINGS. Absolutely not.

Mr. GIUFFRA. Why did you not consider the option to be an important piece of evidence at trial?

Mr. JENNINGS. I was trying the lawsuit on the basis of a document specifically that had been signed by Seth Ward and Mr. McDougal, and I considered that to set forth the terms of the agreement and was trying the lawsuit to find out how much money Mr. Ward was entitled to on the basis of that agreement.

Mr. GIUFFRA. What do you recall was Mr. Latham's testimony at the trial with regard to the Holman Acres parcel?

Mr. JENNINGS. I think he testified that for some reason, an option that was not ever exercised represented payment to Mr. Ward of his commissions, and I consider that to be patently absurd.

Mr. GIUFFRA. Now isn't the reason the option was important to Latham was because there had been a promissory note that had been entered into by Madison and Mr. Ward for \$300,000 with regard to the commissions?

Mr. JENNINGS. I don't know why the option was important to Mr. Latham. I know that there was never any contention at the trial that Mr. Ward was not owed at least \$300,000 in commissions.

Mr. GIUFFRA. The question was whether he was also entitled to the land as well as the \$300,000.

Mr. JENNINGS. None that I had any—you know, I did not recognize any such contention if it was made.

Mr. GIUFFRA. At the trial, did anyone from Madison put forward any evidence supporting Mr. Latham's theory with regard to the option agreement?

Mr. JENNINGS. No, nobody did.

Mr. GIUFFRA. There was no supporting evidence as to what the intent of the option was?

Mr. JENNINGS. Absolutely none.

Mr. GIUFFRA. Madison did not present any witnesses relevant to this particular theory with regard to the option at trial?

Mr. JENNINGS. Did not.

Mr. GIUFFRA. Mrs. Clinton was never asked to testify; correct?

Mr. JENNINGS. Oh, no. Of course not. That is correct.

Mr. GIUFFRA. No one knew that she was the person who had drafted the option until recently?

Mr. JENNINGS. I had no knowledge at that time who had drafted the option.

Mr. GIUFFRA. Had Seth Ward ever indicated to you that Mrs. Clinton had drafted the option during the trial?

Mr. JENNINGS. No, and he expressed surprise recently when press reported that she had.

Mr. GIUFFRA. Do you recall, during the course of your preparation for trial, investigating who had prepared the option?

Mr. JENNINGS. I'm sorry?

Mr. GIUFFRA. Did you investigate during the trial, in preparing for trial, who had prepared the option?

Mr. JENNINGS. No, sir. The option was not of any importance to me. I was suing on the basis of a document that had been signed by Mr. McDougal and Mr. Ward. Nobody has ever said that that isn't Mr. McDougal's testimony—I mean, signature. In fact, the testimony is that it is his signature and nobody ever contested that.

Mr. GIUFFRA. Was there any discussion of the option during the meeting between Mr. Kendall and Mr. Ward in January 1996?

Mr. JENNINGS. Not to my recollection, no.

Mr. GIUFFRA. There was no discussion of the option when you met with Mrs. Clinton?

Mr. JENNINGS. Absolutely not.

Mr. GIUFFRA. And it's your testimony that the meeting with Mrs. Clinton on August 9th strictly concerned her abilities as a lawyer and was intended to deal with this issue of refuting the claim that somehow her abilities as a lawyer were not up to snuff, the claim that was being made in this book?

Mr. JENNINGS. Obviously, sir, I cannot testify from memory that nothing else was talked about with Mrs. Clinton, but I can tell you that we did not talk in any way about Whitewater or Madison or Mr. Ward's lawsuit or anything of that nature.

Mr. GIUFFRA. Thank you very much, sir.

Mr. JENNINGS. You're welcome, sir.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Jennings. Good morning, Ms. Dickey.

Ms. DICKEY. Hello.

Mr. BEN-VENISTE. Mr. Jennings, let me go back to the circumstances as you understand them in connection with the acquisition of the IDC property. If I understand your testimony, this property was considered to be extremely valuable and was the subject of hard arm's length bargaining between buyer and seller?

Mr. JENNINGS. Well, even more than that, it was also with the banks that had mortgages on the property. I think there were three different banks who had mortgages on the property in excess of the amount of the sales price.

Mr. GIUFFRA. So that when you say "in excess of the amount of the sales price," the sales price being \$1.75 million?

Mr. JENNINGS. Right.

Mr. BEN-VENISTE. And the mortgages which had been loaned by various institutions, not Madison Guaranty Savings & Loan but other institutions on this property totaled somewhere in the range of \$3 million, if I understood?

Mr. JENNINGS. I believe that's the reason the \$3 million figure was first mentioned, they were trying to get the banks out and in the clear, but I do not have actual knowledge of the amount of those loans, but I know they were in excess of \$1,750,000.

Mr. BEN-VENISTE. So the lenders and possibly the banks which were secured by the property itself took a loss in connection with the sale of this property to Madison?

Mr. JENNINGS. That's certainly my understanding.

Mr. BEN-VENISTE. Do you have any understanding, did Mr. Ward ever tell you that Mrs. Clinton had anything whatsoever to do with the acquisition of the property?

Mr. JENNINGS. He did not tell me any such thing.

Mr. BEN-VENISTE. How was this property referred to by you and Mr. Ward and, indeed, during the trial of the case between Mr. Ward and Madison Guaranty where you represented Mr. Ward? Was it referred to as IDC?

Mr. JENNINGS. Yes, sir.

Mr. BEN-VENISTE. Was it ever referred to as Castle Grande?

Mr. JENNINGS. Castle Grande was a very small part of the purchase. It is my understanding that it was a trailer park, it was residential, and nobody referred to the entire transaction as Castle Grande.

Mr. BEN-VENISTE. In the trial which occurred in 1989, was it?

Mr. JENNINGS. No, sir, it was 1988.

Mr. BEN-VENISTE. In August 1988?

Mr. JENNINGS. August 30 and 31, 1988.

Mr. BEN-VENISTE. Thank you. In the trial of the case, the property which was underlying the dispute between the parties was referred to as IDC; is that correct?

Mr. JENNINGS. That is correct, I have reviewed that transcript. Naturally, I didn't memorize it, but I don't believe there was any reference to Castle Grande, other than that it was a small part of the transaction.

Mr. BEN-VENISTE. Would you provide us with your understanding of Mr. Ward's participation in the negotiations for the purchase of the property at this bargain price, or what was considered a bargain price at the time, and his subsequent involvement.

Mr. JENNINGS. Well, as I've said, he was asked by Mr. McDougal to see if he could get from the IDC an easement through the property because Madison, or McDougal, owned some property south of there that was landlocked. He went to Mr. Everett Tucker, who was a friend of his, and asked Mr. Tucker if the IDC would give an easement. Mr. Tucker said no, but we will sell you the property. So Mr. Ward said what do you want for it, and Mr. Tucker said \$3 million. Mr. Ward went back to Mr. McDougal and said they won't give you an easement but they will sell the property to you for \$3 million. Mr. McDougal said that's too much. Not interested.

Mr. Ward reported back to Mr. Tucker and Mr. Tucker said well, maybe we can do better on the price. He finally said we'll sell it for \$1.75 million. Mr. Ward went back to Mr. McDougal and said this is a bargain. Since I am an employee and I contacted Mr. Tucker at your request, I feel duty bound to let you buy the property if you want to. If you don't, I'll buy it myself.

Mr. BEN-VENISTE. What happened thereafter?

Mr. JENNINGS. Well, Mr. McDougal said he wanted to buy it, and he told Mr. Ward that he couldn't handle the entire transaction and asked Mr. Ward if he would take part of it. Mr. Ward said he would be glad to.

Mr. BEN-VENISTE. And that resulted eventually in the agreement that you refer to as between Mr. Ward and Mr. McDougal?

Mr. JENNINGS. Yes, sir. As I recall the documentation, there was a deed to the south half—not exactly half, but the property south of 145th Street, a deed to Mr. Ward for the property north of 145th Street, an option executed between Mr. Ward and Mr. McDougal on behalf of Madison for Madison to buy from Mr. Ward the property that had been deeded to him.

Mr. BEN-VENISTE. Later, there was an option agreement entered into but not exercised as you've testified?

Mr. JENNINGS. That's correct, sir. That had nothing to do with the original transaction.

Mr. BEN-VENISTE. Tell us what your understanding of that option was in the context of what had gone on between the parties.

Mr. JENNINGS. I will have to tell you what happened and then if you want to know how I interpret that, I will be happy to do it. What happened was that Mr. Ward, and I believe the exact date was March 31, 1986, borrowed \$400,000 from Madison. He had been requesting payment of his commissions and he had been told that Madison didn't have the money to pay them.

He had some need, he had some transaction he wanted to enter into that he needed money for, and also since it was generally agreed that he was entitled to, at least, \$300,000 for his commissions, he borrowed \$400,000.

The deal that he had planned to make with the \$100,000 of that fell through, so he paid them back the \$100,000, leaving a balance on the note of \$300,000. My best recollection also is that some of the proceeds of that note were used to pay an earlier note that Mr. Ward had given to Madison.

Then later—this would have been according to the date on the option, I believe it was May 1—

Mr. BEN-VENISTE. It was dated May 1st, but if you will—see, it is notarized as of the 5th, I believe.

Mr. JENNINGS. OK. In any event, Mr. McDougal wanted to be in the position to buy that property for \$400,000 if—it had been mortgaged to secure the \$400,000 loan, which is now \$300,000, if Mr. Ward elected to pay off the note and satisfy the mortgage, then Mr. McDougal, as I understand it, still wanted to be in the position to acquire that property for \$400,000 if he could get it. That's why he asked for the option.

Mr. BEN-VENISTE. Now at the trial of *Ward v. Madison* in which you represented Mr. Ward, the question has come up as to whether this option agreement was somehow an important question in the trial. You have explained the reason why you understood the option was entered into. Was there any interest whatsoever in who drafted that option agreement at the trial?

Mr. JENNINGS. Absolutely not.

Mr. BEN-VENISTE. You chuckle. Does the law in Arkansas provide for a Parole Evidence Rule?

Mr. JENNINGS. Yes, sir, it does. When Mr. Latham testified as to his understanding about what the agreement was, I objected on the ground that he was attempting to vary the terms of a written agreement by parole evidence, which is absolutely improper, and the judge, and don't ask me why, he overruled the objection, but in the instructions to the jury by the court, there was never any instruction with regard to any variation of the terms of the written agreement by parole.

Mr. BEN-VENISTE. The Parole Evidence Rule applies to an executed document and essentially forecloses oral testimony about the agreement?

Mr. JENNINGS. Any testimony that is designed to question the terms of the agreement or vary the terms of the agreement based upon parole is inadmissible.

Mr. BEN-VENISTE. And in that regard, the subject of the court's ruling was with respect to the initial September 24th agreement. I take it no one attempted to advance some parole evidence with respect to the option agreement?

Mr. JENNINGS. They had interpreted Mr. Latham's testimony to the effect, to mean that the agreement with regard to Holman Acres took the place of the agreement with regard to commissions. And that certainly wasn't what the written agreement said, and nobody other than Mr. Latham even suggested that Mr. McDougal and Mr. Ward hadn't agreed to what the written agreement said that they had agreed to.

Mr. BEN-VENISTE. This Holman Acres was considered to be the most valuable portion of the IDC property?

Mr. JENNINGS. Well, in the sense that the total transaction was a million and three-quarters, and the parties valued Holman Acres at \$400,000, so it's—

Mr. BEN-VENISTE. Acre for acre almost?

Mr. JENNINGS. It was what, 23 percent of the value of the entire transaction. That's the only answer I can give you. There was no other single piece of property that I know of that was—oh, yes, I take that back, excuse me. My recollection is bad. The sewer and water system was valued at much higher than \$400,000.

Mr. BEN-VENISTE. Because there was a commercial enterprise on that property?

Mr. JENNINGS. That's correct. My recollection is that it was sold for \$1.2 million, just that one piece, and I don't think they ever collected \$1.2 million, but that was the sales price.

Mr. BEN-VENISTE. So a small portion of the \$1.75 total purchase price was sold for \$1.2 million?

Mr. JENNINGS. Well, now again, was it a small portion? I don't know how much property it involved, but it was certainly a valuable commercial operation.

Mr. BEN-VENISTE. OK. So let's continue on with the option agreement, because much has been made in these proceedings of the option agreement and the fact that Mrs. Clinton apparently spent something under 2 hours in connection with drafting it. If you notice, there are two versions of the option agreement.

Mr. JENNINGS. Well, I didn't realize that until my deposition was taken, but I now know that that's true.

Mr. BEN-VENISTE. Let me refer, if we could have put before you the deposition of Mr. Ward, which was taken pretrial in the *Ward v. Madison* case in 1988. At page 83, line 23. Actually go up to 21:

Question: I have two resolutions and two different pieces of property.

Answer: The resolutions they wrote had the wrong legal descriptions. After it was put together, I called that to Don Denton's attention, and he had Document 063 prepared, and it was signed by John Latham.

Mr. JENNINGS. I'm sorry, that is not what I have before me, I do not believe. What page was it?

Mr. BEN-VENISTE. It's page 83.

Mr. JENNINGS. Oh, 83, OK. Let me go back on that.

Mr. BEN-VENISTE. Again, it would start at line 21, the question.

Mr. JENNINGS. I notice that deposition was apparently attended by Mr. Rowe of my firm. I don't believe I was present.

Mr. BEN-VENISTE. Right.

So Mr. Ward gave these answers to the following questions at that time.

Question: So what happened was they put the wrong property description in the resolution?

Answer: That's right.

Question: And Mr. Denton substituted the first two pages, which you and somebody initialed. Is that John Latham? I can't tell. Jim McDougal? I see "S.W."; I assume those are your initials?

Answer: It would be John Latham, I guess.

Then it goes on, but the wrong property was designated in the original option agreement, and according to Mr. Ward, Don Denton, prepared the final executed agreement. Do you know who Mr. Don Denton is?

Mr. JENNINGS. I do.

Mr. BEN-VENISTE. Who is Don Denton?

Mr. JENNINGS. Mr. Don Denton was an employee of the Union National Bank at a time when Mr. Ward was doing business with Union National and Mr. Ward knew him through that relationship, and Mr. Denton was the one who suggested to Mr. Ward that Mr. McDougal might be interested in hiring Mr. Ward.

Mr. Ward at that time was retired and Mr. Denton thought that maybe he would like to get a little additional income, I guess, so Mr. Denton introduced Mr. Ward to Mr. McDougal, who Mr. Ward had never previously met.

Mr. BEN-VENISTE. My point in this is that the first draft of this option agreement which bore the designation small "g," which in turn has been identified here as the Rose Firm designation for Mrs. Clinton's then-secretary was the initial draft dated the 1st, then it was superseded by a document apparently prepared by Mr. Denton, and that document was the one that was signed and notarized and was the document that was presented. Mr. Jennings is that consistent with everything you know?

Mr. JENNINGS. Yes, sir, that's consistent.

Mr. BEN-VENISTE. So that—

Mr. JENNINGS. Except that I had forgotten about the first one entirely.

Mr. BEN-VENISTE. If I understand your testimony, the option agreement itself was not a big issue at the trial, the explanation that Mr. Ward provided was accepted by the jury on the larger issues in the case, the court did not disturb that verdict, I take it?

Mr. JENNINGS. That's correct. Actually, Mr. Ward testified that he was entitled to \$391,640, or \$840, and the jury returned a verdict for \$391,645, or \$845, so they gave him \$5 more than he said he was entitled to. I don't want to retry that lawsuit. I'm satisfied with the results.

Mr. BEN-VENISTE. I imagine. Let me ask you, and this is quite a serious question. Did anything come to your attention during the course of that trial or your representation of Mr. Ward which suggested in any way, shape or form that anyone at the Rose Law Firm, much less Mrs. Clinton, had done anything improper or inappropriate in the representation of Madison?

Mr. JENNINGS. Absolutely not. I was only aware that the Rose Firm in some connection had represented Madison, and that was the reason that Mr. Ward didn't go up to the Rose Firm to file his lawsuit, but any information whatsoever about what they had done in connection with their representation was unknown to me, and I certainly know of nothing that they had done that was improper.

Mr. BEN-VENISTE. If I understand your testimony, the question about who drafted the option agreement was completely irrelevant to the issues at trial in *Ward v. Madison*, and further, that any effort to present evidence, should it have been relevant, regarding the drafting of the agreement would have been barred by the Parole Evidence Rule?

Mr. JENNINGS. Yes, and I would have hoped that the court would have so ruled, but as far as I know, there was never any effort on the part of anybody at the trial itself to present evidence with regard to who drafted the option agreement. This was from a deposition which I didn't attend, but as far as the transcript of the trial is concerned, there was no evidence at any time about who drafted the option agreement so far as I can remember.

Mr. BEN-VENISTE. Let me turn to the question of your more recent contacts, now we'll zoom fast forward into the 1990's and your visit to the White House in August of last year.

Mr. JENNINGS. Yes, sir.

Mr. BEN-VENISTE. There has been a report in The Washington Post with regard to what was said by you in your deposition. Did you discuss your deposition with anyone from the press?

Mr. JENNINGS. I certainly did not, and, in fact, I wrote to Mr. Dinh and expressed shock that the press had information about what I had said in my deposition when I had not yet been furnished a copy of it.

Mr. BEN-VENISTE. I don't think—did you copy us in that letter? I don't think we have a copy of it.

Mr. JENNINGS. I'm afraid that I didn't, but I—

Mr. BEN-VENISTE. Do you have a copy of that letter?

Mr. JENNINGS. Yes, I do. Just a second.

This was faxed to Mr. Dinh on February 9, 1996, and it does not show that I copied anybody else.

Mr. BEN-VENISTE. May we borrow your file copy to make a copy of that?

Mr. JENNINGS. You most certainly can. May I read what I said, very briefly?

Mr. BEN-VENISTE. Sure.

Mr. JENNINGS. It said, "Dear Mr. Dinh: Based upon a news story in today's Arkansas Democrat-Gazette," that would have been on the 9th of February, "and a telephone call that I received this morning from a reporter, it is apparent that the press has access to information concerning which I testified in my deposition. Since I do not have a transcript of my deposition, it is shocking to me that the press already has it.

"I respectfully request that I be provided with a copy of the transcript of my deposition in ample time for me to review it before my scheduled appearance before the Committee on Thursday, February 15, 1996. I believe I was advised that I was entitled to have a transcript 4 days before an appearance before the Committee. I could be mistaken about that, but that is certainly my impression."

I received a telephone call from Mr. Dinh apologizing to me for this having been made public before I had a copy and assuring me that I would have a copy promptly and that he would attempt to determine the leak.

Mr. BEN-VENISTE. If we may have a copy of that, we would ask that it be made.

Mr. JENNINGS. I might add that I received my copy of the transcript about noon on Saturday, which would have been the 10th, I guess. And that was the first time that I had received it, and I did not discuss—very deliberately did not discuss what I had testified to with anyone.

Mr. BEN-VENISTE. Mr. Chairman, may we make this letter a part of the record?

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Of importance is the fact that the news story that I referred to, which is dated February 9, 1996, there is a suggestion that your visit to Washington had something to do with the appearance in the first instance of billing records. The article is headlined, "First Lady Met Arkansas Figure's Lawyer," I guess that was you, "In Month That Billing Records Appeared," drawing some sort of connection between the fact that you came up for the purposes you've testified about—

Mr. JENNINGS. I know that's bound to have been Susan Schmidt. Excuse me. Go ahead.

Mr. BEN-VENISTE. The connection that is drawn here is because you were in the White House in August, and because Ms. Huber recollected that that's the first time she came in contact with the billing records so far as she recollected in her testimony here, that somehow your appearance at the White House was associated with the initial discovery of those billing records.

Mr. JENNINGS. That is absolutely absurd. That did not happen, had no connection whatsoever.

Mr. BEN-VENISTE. Now there did come a time when in January 1996, subsequent to the time the billing records were discovered, that Mr. Kendall met with Mr. Ward in Arkansas.

Mr. JENNINGS. Yes, sir.

Mr. BEN-VENISTE. Was that the first time that you saw these billing records?

Mr. JENNINGS. I am not even sure that I saw the billing records at that time because I didn't examine what Mr. Kendall was show-

ing to Mr. Ward, but I assume that that's what it was. If that's what it was, that's certainly the first time I had ever seen them.

Mr. BEN-VENISTE. Now, I have not read Mr. Ward's deposition which was taken in Arkansas on Monday of this week, but in that deposition he had very little recollection of conversations with Mrs. Clinton back in 1985 and 1986. In your meeting with Mr. Kendall and Mr. Ward, was Mr. Ward's recollection any clearer?

Mr. JENNINGS. No, sir. That is consistent with what I heard him tell Mr. Kendall.

Mr. BEN-VENISTE. Ms. Dickey, if I understand your testimony, you saw no billing records at any time, so far as you know, when you were at the West Wing of the White House?

Ms. DICKEY. I was in the East Wing of the White House.

Mr. BEN-VENISTE. In the East Wing.

Ms. DICKEY. East Wing. In my office. And I never recall having seen those records.

Mr. BEN-VENISTE. Thank you.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes, I just wanted to get one question to you, Mr. Jennings. First of all, I thought your comment at the end of your statement, "I don't know why I'm here," was significant. Frankly, there are two of us here today who are in that situation.

Senator DODD. Three.

Senator SIMON. Three, all right. Maybe more.

Mr. JENNINGS. If I may interrupt, at least you're being paid for being here, sir.

[Laughter.]

Senator SIMON. My staff did a little biography of you and said you are a highly-respected lawyer in Arkansas, and if you will forgive me, you have a few years on you. Do you have any reflection on what we're doing here?

Mr. JENNINGS. Do I have any—

Senator SIMON. Yeah, reflection, on this whole process.

Mr. JENNINGS. Well, let me say that as the process has been reported, and I'm not talking about what has actually happened, but as it has been reported, there has been a great deal of inaccuracy in the reporting of what is happening here and what has happened with regard to all of this. For one thing, Mr. Seth Ward has been shamefully mistreated in the press. Mr. Seth Ward has not done anything illegal, and according to the jury, he was entitled to every penny that he didn't get, because later the RTC was able to attack collaterally that judgment; it wound up in a settlement by which Mr. Ward paid back some of what he had won in the lawsuit.

It has been published over and over again that Mr. Ward was indebted to Madison, that he didn't pay in amounts over half a million dollars. That is absolutely untrue. He paid every penny that he owed Madison.

In this lawsuit, and I don't know about Illinois, although I went to school at Northwestern, in this lawsuit, if there was any indebtedness of Mr. Ward to Madison, when he sued Madison under Arkansas law, Madison was required to counterclaim for any amount that they claimed that Mr. Ward owed them.

As a matter of fact, in our complaint, we said that Mr. Ward owed Madison \$93,000 on a note, plus interest. When the verdict was rendered, it was stipulated that Madison was entitled to collect and have deducted from any judgment in favor of Mr. Ward the \$93,000 plus interest, which was done, and that represented full and total payment by Mr. Ward of any amount of money that he owed to Madison.

Likewise, after the RTC collaterally attacked the judgment and finally entered into a settlement, they entered into a release in which the RTC has released Mr. Ward from any claims whatsoever on behalf of Madison, RTC, or anybody else.

Another thing that has greatly distressed me is that it has been reported that Mr. Ward's transaction cost Madison \$4½ million and was a factor in Madison becoming insolvent. I would love to see the arithmetic on that, because the evidence in the lawsuit was that property that was purchased for \$1,750,000, was sold for \$3,600,000 and some. That is the reason that Mr. Ward was entitled to commissions in excess of \$300,000. That's repeated, every story says that Mr. Ward broke Madison. The truth of the matter is that in 1986 when Mr. McDougal left, and I presume was asked to leave Madison, the Federal Home Loan Bank, as I understand it, took over the governing of the day-to-day operation, nobody contended that this one particular transaction had broken Madison.

I certainly respect the Senate as a body and I certainly respect the right of the Senate and all of its Members to investigate this matter, I don't question that, and I think it's appropriate, but I do think that this investigation ought to be directed strictly at getting to the truth.

Senator SIMON. I know the light is on, but you mentioned specifically Mr. Ward, his reputation being harmed. Do you think it is possible in the process that we have also harmed the reputation, just as Mr. Ward's reputation has wrongfully been harmed, harmed the reputation of Mrs. Clinton and other people in the process?

Mr. JENNINGS. Yes, that is my opinion. My wife thinks you are harming my reputation by having me here.

Senator SIMON. Well, and your wife may be correct.

Mr. JENNINGS. I realize that.

Senator SIMON. We are taking, and I don't mean to pick on you, Ms. Dickey, but we are bringing in secretaries, we are frightening people, people are piling up big legal bills, and I have to ask myself what is the purpose of it all. And if there is no real national purpose to be served, then it seems to me we ought to close up shop and issue our report to the Senate.

I thank my colleague for yielding.

The CHAIRMAN. Mr. Jennings, first of all, we thank you for your cooperation and we certainly take note for the record of your cooperation. I want to tell you that so we hope that your wife or no one else gets anything other than the fact that your appearance here is in an attempt to give the Committee an opportunity to gain facts so that we can complete a picture, and that's our job. Whatever that picture turns out, we're not in the business of attempting to put up a false picture, but to get the facts so the American people and the Congress have them. That's what our purpose here is.

And let the record reflect that you have been most cooperative at every stage, and we are deeply appreciative.

Mr. JENNINGS. Thank you.

The CHAIRMAN. Let me ask you this because I hear and I respect your views as it relates to the characterizations that do or do not fairly impinge upon Mr. Ward. The fact of the matter is, though, he did come to a settlement with the RTC, is that not correct?

Mr. JENNINGS. Yes, he did.

The CHAIRMAN. And he agreed to pay them back a substantial amount of money; is that correct?

Mr. JENNINGS. \$335,000 is my recollection.

The CHAIRMAN. The reason he agreed to pay them back their \$335,000 is why?

Mr. JENNINGS. Well, for one thing, Mr. Ward had fallen out of a second-story window when he was trying to fix the downspout on a house and had suffered a very severe injury. He broke several vertebra, he has very serious residual injuries. And he thought and his lawyer then, Tom Ray, thought that not only was this continuing litigation potentially injurious, further injurious to his health, but that before he got through he was going to spend more money on attorney fees than what was in dispute and that the best interest of Mr. Ward was to get the thing behind him.

The CHAIRMAN. Well, OK, but the fact of the matter is that he entered into a settlement and paid back \$335,000 and there are those who contend, the RTC and others, that he had no legitimate claim to those moneys.

Now, I understand we work out settlements for different reasons and I understand why people may agree to handle litigation, but that's a substantial sum of money. And the fact remains, and we will demonstrate to you, and I don't think that maybe you had all of this information, we will show you rather quickly and vividly how it is that that entire process, the Castle Grande/IDC process, was estimated to cost the taxpayers \$3.8 million.

It doesn't mean that along the way that some people may or may not have made some money and that various processes at that time did not cost money, and let me tell you, that has been very clearly substantiated. Even the RTC Pillsbury Report refers to this in some detail, and you probably don't have all of that, and I understand that.

Let me just assure you of one thing, and I certainly don't think that your appearance at any one place should be characterized as anything other than, for example, your appearance here today, as an effort to be cooperative. And you have never sought to delay, I want the record to indicate that, so if your wife is watching or friends are watching, Mr. Jennings has always been cooperative with this Committee in terms of everything, I've been advised, and we want people to note that.

But why the interest as it relates to your appearance at the White House on or about August 9, I guess, 1995, because that happens to be a day that Mr. Kendall was there, and you have explained and Mr. Kendall is deeply involved in the matter of attempting to gain facts and represent the Clintons as it relates to Whitewater and Whitewater-related matters. That is the same day, so you were there, Mr. Kendall was there. I think it's appropriate

for us to ask what the circumstances are and were. And you've testified and you've shed light on that.

Mr. JENNINGS. I agree absolutely. I have no question about that.

The CHAIRMAN. So in other words, when you say you don't know what you're doing here, and let me just add, someone else that we know that was there who was a close adviser in this matter, in the related matters that we're looking at, Susan Thomases was there, and then——

Mr. JENNINGS. May I correct something that I said?

The CHAIRMAN. Yes. I am not saying, by the way, and that's why we asked if you met and you said you did not meet her on that day, and I accept that, but that is why we pursue the line of questions. It's not that we're just drawing it out and we've tried to bring people in to give them a difficult time or to impugn their reputations, and I just want to share that with you. We have an indication that Susan Thomases was there——

Senator, please. I really attempt to accord everybody the right to ask their questions, to make their presentations, as long as we're not abusive of a witness, I have allowed both sides and everyone to try to have a fair berth. I am not trying with exactitude to split hairs and everything. Sometimes people may make reference to one party and a thing that may be off.

I am just trying to say and assure Mr. Jennings and the public that we're not just bringing people in to harass them or to go over old things. We're trying to get the facts.

Mr. Jennings, in your testimony you've helped us.

Mr. JENNINGS. I hope so.

The CHAIRMAN. You have. Some people may have been looking to see what the implications were. I am trying to say, because I think we have a White House record that indicates Ms. Susan Thomases was there on or about that period of time on August 4th, earlier there was an RTC report that came about. Then we had Ms. Huber come in and testify that it was sometime during August, late July or early August, she thought it was in August, that she found the billing records.

And we know that you were there then, and I think it's a logical thing to ask, did these things come up, did you discuss them, et cetera. You have given your testimony. I believe you. I absolutely believe you. I have no reason not to. But I don't think it's fair—and others say this is ridiculous, there's no connection, why should we be bringing witnesses in. There is a reason, and we're attempting to get the facts. And if the facts clearly indicate that there was no connection, then that should be known.

Mr. JENNINGS. I agree.

The CHAIRMAN. We will attempt to do that. I hope we have reassured you and that is why I took the time to go through some of these things with you.

Mr. JENNINGS. I have something that I need to say. It's Patsy Thomasson that I know. If that's somebody different from Susan, I misspoke.

The CHAIRMAN. That is someone different and let the record indicate you did not indicate that you saw Susan Thomases on that day. We have reason to believe she was in the White House and no one says she was at this meeting. That's why we raised it.

Patsy Thomasson is someone that you know back from Arkansas, days in Arkansas?

Mr. JENNINGS. Right. If I had seen Susan Thomases, I wouldn't have known who she was. One other thing I would like to say, with the permission of the Chair.

The CHAIRMAN. Certainly.

Mr. JENNINGS. If indeed Madison lost \$3.8 million, and I accept your statement on that, it was not Mr. Ward's fault.

The CHAIRMAN. Well, I think it is the operation of the bank itself and the manner——

Senator DODD. May he explain that a little bit? I was going to raise that issue. I think it is a very, very important point because the implications have been that Mr. Ward was responsible for that. Now, Mr. McDougal, that's another matter, but I would like Mr. Jennings to explain why he believes that to be the case.

Mr. JENNINGS. Well, because the property sold for \$3.8 or \$3.6 million. It was purchased for \$1.75 million. Now, I wouldn't dispute the fact that Mr. McDougal could take those facts and transfer them into a loss, but I don't think Mr. Ward would ever have considered that the transaction would produce any loss. And as a matter of fact, the testimony, undisputed, was that Madison could not have made this purchase except for Mr. Ward, that he had the connections with the banks and with the IDC to bring about this deal.

Second, Mr. Latham testified on cross-examination at the trial that this was obviously a good deal for Madison. And that's why it seems—it's very difficult for me to see that anybody can blame Mr. Ward for any loss that Madison suffered.

Senator DODD. Very important point, Mr. Chairman. I think you will probably agree there is a distinction, I don't think that was drawn very well before, the implications that Mr. Ward was responsible, and I appreciate your response to that question.

The CHAIRMAN. We're not going to get into a back and forth on it but we will put up later on some—I don't even think we have to do that. I think the record as it relates to the manner in which—I have characterized the operation of the bank as a real criminal enterprise and I think at some point in time, that's exactly what it became. Whether it was because McDougal figured out that he couldn't save it and let's do what we have to or whatnot, but it certainly is something that defies, I think, description as to anything less than. It was just run in a blatant manner, without regard for taxpayers.

Senator DODD. I am not arguing that. Mr. Ward, his role, and I think he gets lumped into that everytime.

The CHAIRMAN. Let me say this to my friend and colleague. The repayment of the \$335,000, and I heard Mr. Jennings, obviously there was, and I think if you look at the transactions themselves and begin to examine them, there was very real exposure on his part. You don't advise your client to settle for the amount of money that they are looking for, but——

Senator DODD. Could he respond to that a little bit? Is that——

Mr. JENNINGS. Beg your pardon?

The CHAIRMAN. He has, really, he has, and it's on my time. I want to try and move through it.

Ms. Dickey, this is a very delicate area. It concerns the questions with respect to Mr. Foster's death, the Minority and the Majority have agreed, in the interest of attempting to calm down some of the speculation that has taken place, to ask you if in your own words, because there have been statements made and assertions made, and some made publicly, that when you learned of Mr. Foster's death, that you contacted the Governor's Mansion to inform someone of that. I don't know who that was or wasn't. And then came the question of timing, what time you may have done that.

You have advised us as to that. I want people to know that, but in order to put this question as best we can and to get and ascertain the facts, we have decided, Senator Sarbanes and myself, that we would ask you to describe in your own words as best you can how you learned about this, about what time you learned about it, and then if you did make a subsequent notification to somebody, what time did you make that. I hope you don't find that offensive.

Ms. DICKEY. That's fine.

The CHAIRMAN. We want to try to clarify. Would you tell us?

Ms. DICKEY. Certainly.

The CHAIRMAN. Thank you.

Ms. DICKEY. I watched the President on Larry King Live the night of July 20, 1993, in the Solarium of the White House on the third floor. When that program was over, the doorman who works in the Usher's office, whose name is John Fanning, came up to the Solarium and informed me that Vince Foster had in fact committed suicide and his body had been found. To the best of my recollection, that was around 10:00 Eastern Time on the night of July 20.

Vince Foster was very close to our family, lived next door to them in Little Rock. It was a very personal thing for me. I immediately started to cry and became hysterical, went down to the second floor to see if the President was there. He was not there. I made a phone call to my mother, who was in Virginia. I made a phone call to my father, who was in Atlanta, Georgia.

I then went back up to the third floor. I don't know how much time I spent there. I went back down to the second floor, found the President there. He told me that he had shot himself in a park. I went back upstairs to the third floor. I don't know how much time had elapsed. I found out at 10:00 p.m. My best recollection is that I did not make the second series of phone calls until at least 10:20. I then called Ann Stock, who is the Social Secretary and my boss at the time. I called Ann McCoy, who I reported to at the Governor's Mansion, who had been a friend for a long time who also knew Mr. Foster, and lived down the street. And then I did call the Governor's Mansion.

The CHAIRMAN. So it was well after 10:00 p.m.?

Ms. DICKEY. My best estimation that I called the Governor's Mansion was 10:30 p.m.

The CHAIRMAN. I apologize to you for bringing this up, but the Majority and the Minority thought that it was important. We thought it was important to get a clarification and we're not going to go any further.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I would like to just go one step further.

The CHAIRMAN. Certainly.

Senator SARBANES. It has been asserted by some that when you called the Governor's Mansion in Little Rock, there was a difference in the time and you have now said it was after the Larry King show and, therefore, after 10:00 p.m.

It has also been asserted that you told them that Vince Foster had gone to his car in the parking lot and shot——

Ms. DICKEY. That's absolutely not true.

Senator SARBANES. Not true, OK.

Ms. DICKEY. I never heard that, I never would have said that because that was not the facts as I knew them at that time. I am absolutely positive of the timing of this.

The CHAIRMAN. I think that's the key element, and I don't wish to keep that aspect going any longer, nor did any of us personally want to bring it up but it's the kind of thing that I think we have an obligation, when we have a witness who has testified and who is here to testify and who has given us this information by way of deposition, that it is important to try to clarify that situation as much as possible. So we attempt to deal with some of these rumors that may have been circulating. I think to that extent we have done that.

I thank you, Ms. Dickey.

Ms. DICKEY. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. If Senator Dodd would indulge me for just a moment.

Senator DODD. Certainly.

Senator SARBANES. Mr. Chairman, I'm concerned about this assertion that Susan Thomases was there that day. She may or may not have been, but the record I'm looking at doesn't demonstrate that. And I would like to pursue that. Now maybe we should put it up on the screen, because my understanding is that the record indicates that she had, as it were, an appointment or had been put on the list, but she was never issued a badge and there's no time of arrival or place of arrival for her, so that's the first point.

Second, this would indicate that the place she was going to, in any event, was in the Old Executive Office Building, and not in the White House residence, but——

The CHAIRMAN. Senator, I never said the White House residence, number one, and I was explaining to Mr. Jennings that there were a number of occasions and people who were there, including himself, including Mr. Kendall, that gave rise to us including a report that Susan Thomases was there. I didn't say—we asked if he met. He said no.

Senator SARBANES. I wasn't focusing so much on your comments as I was the questioning of Mr. Jennings earlier in which it was asserted to him as a premise that Susan Thomases was there that day and did he see her.

The CHAIRMAN. But he has indicated quite clearly that he did not see her. Nor would he——

Senator SARBANES. I'm raising the question, on what basis do we make the assertion that she was there. And if it's on the basis of this record, I don't think this record demonstrates that, and I guess I should ask Counsel about it, since they put—is this the basis on which we're making the assertion?

The CHAIRMAN. No, nobody is making—this record is an indication, speaks for itself and it has Ms. Thomases' name down there, "Susan Thomases," "visitee," it says "Curry, on," and it gives a time. Seems to me it's about 9:58, August 9th. Do you have a time there?

Senator SARBANES. 3:00, 1500. Go all the way over, Mr. Chairman, to badge. There was no badge issued and there's no time of arrival.

The CHAIRMAN. I don't know if every time Susan Thomases went in, she had to sign in, whether she had a badge. I mean, I don't want to get into characterizations, but we know that she had the ability to come and to go just about any time. I don't know what the purpose of this is, if it's to suggest that possibly this record that shows she was there, that she may not have been there, then—and we asked to ascertain from Mr. Jennings whether he met her. He said no. We accept that.

Now, you know, if the White House is deficient in keeping its records, then that's part of this.

Senator SARBANES. No, there is not a deficiency in the record. What this record shows, and I think that we need to be clear about that, is that she was put on the list to come, but it doesn't show that she came. They have no time of arrival for her. There may be other evidence that would show somehow she did come, but on the basis of this record, I don't think it can be asserted that she was there. That's the only point I'm making.

The CHAIRMAN. Fine.

Senator SARBANES. I think it's an important point.

The CHAIRMAN. We were attempting to ascertain whether or not Mr. Jennings did see her, and he said he didn't see her. As a matter of fact, I think thereafter, because there was some confusion as it related to a name that's very similar and that I have at times and I think others have at times have confused Patsy Thomasson, and Mr. Jennings corrected that and said, by the way, he doesn't know Thomases, he was thinking of Patsy Thomasson.

Senator SARBANES. Mr. Jennings, when did you hear from Mr. Kendall about these questions that were being raised about Mrs. Clinton's legal abilities? Do you recall?

Mr. JENNINGS. Sometime before August 9th, and I would assume that it was shortly before August 9th.

Senator SARBANES. Now after you got the call, you then made some inquiries to others about her legal abilities?

Mr. JENNINGS. Yes, I reviewed a card index in our office to refresh my recollection about the three cases that I recalled that I had had with Mrs. Clinton on the other side. I got some further details about that. Then I—well, actually one of my partners reminded me that she had been in a case that he and I had been in, although not as an adversary. And there was one other matter that, again, she was not an adversary, but it involved a question of a dispute within a corporation between stockholders, and I rep-

resented one stockholder and she appeared in that, but not on the other side from me, and I frankly don't really remember what, but I was impressed with the way she handled herself in court.

Senator SARBANES. Now, you thought on your own personal impression that she was a fine lawyer; is that correct?

Mr. JENNINGS. Yes.

Senator SARBANES. What did you hear from others as you inquired of others as to your opinion?

Mr. JENNINGS. They confirmed my opinion.

Senator SARBANES. Senator Dodd.

Senator DODD. Well, Mr. Ben-Veniste wanted to raise a question.

Mr. BEN-VENISTE. Let me just ask one further question. Maybe Ms. Dickey can help us with this, that the record that we have with respect to Susan Thomases reflects that there is a request for a visitor being Susan Thomases by a person named Curry. Do you know someone named Curry?

Ms. DICKEY. Yes, I do.

Mr. BEN-VENISTE. Who would that be?

Ms. DICKEY. Betty Curry, Secretary for the President.

Mr. BEN-VENISTE. There is no indication of a badge number being issued or any other information that would suggest that Ms. Thomases, indeed, entered the White House grounds on that day, the 9th. What we have, Mr. Chairman, in other respects is a log of all individuals who came to the residence during the period in question, which would include the 9th, and Ms. Thomases' name does not appear on that log or does not appear on any record reflecting that she entered the residence.

So prior electronic records reflecting entrance and departure would indicate that at least there is a record made when Ms. Thomases, among I suspect a large other segment of the population, comes to the White House, and there is no such record available, so that the implication in this newspaper—in the question that was raised that Mr. Kendall was there, the First Lady was there, Ms. Thomases was there, is just not an accurate implication and premise for the question, based on the records that we have before us.

Now, Mr. Jennings, let me ask you to further elucidate on the issue of losses to Madison. In 1986, Seth Ward entered into the option agreement that is reflected in the document that we have shown you.

In 1986, the Rose Law Firm withdrew from any further representation subsequent to that event of Madison Guaranty. When, to the best of your knowledge, were the losses incurred that comprised this \$4 million?

Mr. JENNINGS. I don't know, but I would assume that they occurred after the option was entered into.

Mr. BEN-VENISTE. So the idea of associating the Rose Law Firm, much less the First Lady, with an institution that lost \$4 million would be somewhat unfair if, in fact, the losses occurred subsequent to any representation by the Rose Firm?

Mr. JENNINGS. I would agree with that.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Well, just very briefly, Mr. Chairman, and it goes really back to issues that have been raised previously, but I note back in August and September of last year, and it looks like The New York Post and Newsday stories that appeared, lengthy stories, "Did Mr. Foster Kill Himself in the White House Parking Lot" is the headline of this one story back in August, a wire service story in September, just a month later, sort of reflecting that same line of inquiry.

Ms. Dickey, you've been here now 2 hours. You have been asked about four questions. You were never deposed; is that correct?

Ms. DICKEY. No, I was deposed on Monday.

Senator DODD. Oh, you were?

Ms. DICKEY. Yes, I was.

Senator DODD. By this Committee?

Ms. DICKEY. By Mr. Dinh and Mr. Portnoy.

Senator DODD. My point being, and Mr. Chairman, if I could have the attention of the Chairman just for a second here, my point here with Ms. Dickey, she's been here a couple of hours, apparently was deposed earlier—

The CHAIRMAN. Senator, excuse me, I apologize.

Senator DODD. The point I'm trying to make, Mr. Chairman, Ms. Dickey has been here a couple of hours, she has been asked about four questions. Issues were raised back in August, in fact, in two papers in my colleague's State, The New York Post and Newsday, going to the question of whether Mr. Foster committed suicide in the White House parking lot and so forth. Here it is 7 or 8 months later, almost a simple phone call could have really answered these questions.

The CHAIRMAN. Senator—no, no, let me—

Senator DODD. Here we are for 2 hours having a witness here, three or four questions that could have been answered weeks ago and resolved.

The CHAIRMAN. Senator, the Committee, in its own mind and its staff, has resolved that.

Senator DODD. What's the point of having Ms. Dickey here?

The CHAIRMAN. Let me attempt, and let's get it out then. It was at the request of the Minority that this issue was raised so that in a public forum it could get the kind of attention necessary to attempt to answer that question, notwithstanding that there have been statements, et cetera, put out, and the Minority raised this and thought it would be appropriate and should be done, so I did not bring this up on my own.

I brought it up at their suggestion, since she was here, to try to cap that, to end that kind of speculation that might be getting the juices of the media going and inflamed certain people. In addition, I guess it's fair to say that there have been literally thousands of letters written to various Members of the Committee, to the Committee, phone calls, et cetera, saying by the way, there is this testimony, I guess there are tapes and whatnot that go around that say at 4:00 or 5:00 or at some time, that Ms. Dickey called Little Rock and therefore this whole story about how Mr. Foster died and when they learned of it was a contrivance.

We did not spend a great deal of time, and I think he's right, Senator Sarbanes suggested that we attempt to deal with this thing in a public way. So I think that what we have attempted to do is to bring some facts, and less of this wild speculation, the kind of thing that fuels the fire, and that is why I agreed with Senator Sarbanes to do it in exactly the manner that we did. I hope it was appropriate. It was not intended to be inflammatory. And again, it came as a suggestion from the Minority, from your side.

Senator DODD. Mr. Chairman, I wasn't privy to any of those conversations. It seems to me that frankly, as I say, first of all, the billing records a simple call, and say look, did you see them or not. If she did, you want to get her up and talk about it. If she says I don't know what you're talking about, then it's a very simple matter for the Chairman or someone else to say we have made an inquiry, staff has, Ms. Dickey says she has no knowledge to it, swear, do anything I want. But I appreciate wanting to get it on the record. Here are stories in August and September of last year raising the speculation.

Obviously when it's in the media, then it breeds even more speculation, so that what you get is then the story builds on itself. It's a simple enough matter, it seems, when that's out there to then call someone, talk to someone, bring someone before the Committee, maybe someone agreed to that. If they did, that's their business, I'll be glad to hear about it.

But even just the Chairman saying look, we have spoken with Ms. Dickey regarding these allegations, there is nothing to them. She says it was absolutely untrue, she made the call sometime around 10:30, that's the end of it. But instead we have the person sit here. Just the implications, as we know, of the witness at that red-carpeted table here, just has its own dynamic to it.

Now if the Minority or others insisted upon her being here, then I'll stand corrected.

Senator SARBANES. Would the Senator yield on that point?

Senator DODD. I'd be happy to.

Senator SARBANES. Let me just trace the history. Ms. Dickey was asked in her deposition about this question involving Vince Foster. Now that's technically outside the scope of our inquiry. But it was asked in the deposition by Majority Counsel.

It seemed to me that it having been explored in the deposition, and since she was here it was important to get the salient facts out on the public record because we have had this problem of leaks, selective leaks as it were, from depositions. So certain aspects of matters get leaked to the press and then you get stories that do not accurately reflect the deposition, so we discussed it with the Chairman and agreed that we would in effect get the basic and salient facts from Ms. Dickey, since she was here today.

Now, your point about the Book Room and whether that could have been done in another way, I think is a valid point but we got into this matter on a limited basis, since it's outside the scope, but since she was here, in order to try to deal with that speculation. I was particularly concerned that it be dealt with since in her deposition, Majority Counsel questioned her about this issue.

Therefore, I had to consider the possibility that in some way or other, that deposition would get leaked in some sort of selective

way, and it seemed to me important therefore to get the facts out on the public record, since Ms. Dickey was here, and that's what the Chairman sought to do earlier.

The CHAIRMAN. I think if anything, Senator, it's a good faith effort on the part of the Committee in a bipartisan way to try to deal with something that was as speculative and could be as provocative as it was, and since Ms. Dickey was here. By the way, let me also say, both the Majority and the Minority are attempting to work out a manner—and I would hope that by the end of today if not by tomorrow morning, we are talking about a proposal as to how to deal with and speed the process in terms of those people who had access to the Book Room. Ms. Dickey was one of those who was there, et cetera.

Indeed, we believe that we can accomplish a great deal of that by way of interrogatories where necessary. We have already proposed a methodology, and I think we are very close to working out a manner by which to facilitate this. So I would mention that to my colleague, we are in the process of working that out.

Senator DODD. Counsel, did you want to make some comments on that?

Mr. BEN-VENISTE. Only in terms of the fullness of the record on this issue. After this article appeared, Mr. Chairman, we obtained Ms. Dickey's affidavit. Do you recall, Ms. Dickey, submitting an affidavit in September 1995 to us?

Ms. DICKEY. Yes, I do.

Mr. BEN-VENISTE. And that affidavit was consistent with your testimony here today?

Ms. DICKEY. Yes, it was.

Mr. BEN-VENISTE. In terms of the time that you made this call. The whole thing arose because a couple of former Arkansas State troopers submitted affidavits that suggested that the call was much earlier, at 6:30 p.m., and that was the purported basis upon which we had this headline story, "Foster Shot in White House Parking Lot," and so forth, or "Foster Committed Suicide in White House Parking Lot." As a result of those affidavits, we then asked for the time records and the work records of the troopers in question, and then the attorney for the troopers said well, maybe the troopers didn't want to testify after all.

That's where the record stood with Ms. Dickey's affidavit, the lack of any documentation provided by the troopers to support this allegation of an earlier call to Arkansas at the time that Ms. Dickey was questioned and as Senator Sarbanes says, the Majority revisited this issue. So I think that sets out the chronology, Senator.

Senator DODD. Well, I appreciate that. Again, as I say, I was not aware that we had asked for it. But in cases where we can move this along, I'm sounding like a broken record, I know, to the Chairman, but here it is, no votes until the 26th. Just to move this process along, because just a couple of witnesses today and then as I say, a lot of this can be answered. I just think we ought to try and answer it if we can, put it in the record, and again, I respect those who want to have people come forward for various reasons, but it seems to me we can avoid that, then we ought to try to do that.

The CHAIRMAN. Senator, in an attempt to do just that, staff went down to Little Rock to interview witnesses, and the deposition of

Seth Ward, which was taken on Monday, February 12th, will be made available in the printed depositions. That deposition was videotaped. We will work out an appropriate manner for those who would want to see the tape. I think it runs some 2½ hours. If any are interested, we will work it out under the supervision of the Committee here after we adjourn.

Senator SARBANES. And Mr. Chairman, I think for the record we ought to make the observation that the reason Mr. Seth Ward was interviewed in this way is because his health is not good and it was determined by both the Majority and the Minority that it was appropriate to receive his testimony in this fashion and not to impose upon him a trip to Washington and the strain and stress connected therewith. He's in frail health, I understand.

The CHAIRMAN. That is correct, I understand he's had a number of procedures, I think Mr. Jennings has indicated that, and so it was in an effort to move the process and to accommodate, recognizing his physical condition that we did this.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Jennings, one of the problems I have with this, so much of the things we hear here and have heard over the weeks just simply don't make good sense. I mean, we say the dates, we say the hours, we say the times, but yet when you look at it as a whole, it just doesn't make good sense.

Now, you flew to Washington in August for a 20-minute visit, you said, with Mrs. Clinton?

Mr. JENNINGS. My testimony was and is that I do not recall whether I had other business in Washington at that time.

Senator FAIRCLOTH. You did have other business?

Mr. JENNINGS. No, sir, I say I do not recall whether or not I did. I do not recall if that trip was made solely for the purpose of visiting with Mrs. Clinton and Mr. Kendall.

Senator FAIRCLOTH. You mean as recently as August you don't remember what you did in Washington, whether you came for a 20- to 30-minute visit, as you testified, with Mrs. Clinton or you had other business? You come to Washington that often?

Mr. JENNINGS. I come quite frequently.

Senator FAIRCLOTH. You don't know whether you came to see her or whether you came for other business?

Mr. JENNINGS. I know I came to see her. Whether I also had other business, I simply do not recall.

Senator FAIRCLOTH. Well, you join a long list of Clinton friends when you don't recall. Who paid for the trip?

Mr. JENNINGS. I do not recall that. I know I didn't.

Senator FAIRCLOTH. The purpose of this trip, so we heard earlier, was to testify or to say that Mrs. Clinton was a very competent and fine lawyer. Is that not right?

Mr. JENNINGS. That's the reason I talked to Mrs. Clinton, yes.

Senator FAIRCLOTH. Did you write a memo or anything to substantiate this?

Mr. JENNINGS. I wrote a one-page memo, as I have testified, in which I listed the cases that I had had an opportunity to either oppose Mrs. Clinton or to be in court when she was in court.

Senator FAIRCLOTH. Do we have a copy of that? Would you make a copy of it available to us?

Mr. JENNINGS. I don't have a copy of it. I assume Mr. Kendall does, or I don't know whether he kept it or not.

Senator FAIRCLOTH. So certainly you said in this memo, and testimony, that Mrs. Clinton is a good lawyer?

Mr. JENNINGS. I listed the cases I had tried with her that served the basis of my opinion about her capabilities as an attorney.

Senator FAIRCLOTH. All right. She was variously referred to as one of the top 100 in the country and whatever.

Mr. JENNINGS. I've heard that.

Senator FAIRCLOTH. But what I really don't understand is this, how this shrewd, smart, top-notch lawyer did not detect that these deals were sham deals that were being moved back and forth. Now it didn't take the bank regulators long to figure out that it was. And don't tell me there were not—you're talking about 10 percent real estate deals. Ten percent is an extraordinarily high real estate deal——

Mr. JENNINGS. Well, you know——

Senator FAIRCLOTH. —commission.

Mr. JENNINGS. I had nothing to do with that transaction.

Senator FAIRCLOTH. Wait a minute, so here Mrs. Clinton did not figure out it was a sham deal with these unbelievably high real estate commissions, and there were sales to insiders. I mean, this is what I'm trying to get to, the common sense of it. Why would Jim McDougal want to pay Seth Ward \$120,000 to make a sale to Jim Guy Tucker, who he is with every day, his close friend?

As I understand it, Mr. McDougal and Senator Fulbright were close friends, but he paid \$77,000 and some commission.

Immediately the bank regulators picked up on this and said it is a sham deal. Why would a lawyer as smart as Mrs. Clinton, who was right in the middle of it, not have figured out that the Castle Grande was a sham deal?

Mr. JENNINGS. I don't know what Mrs. Clinton knew, if anything, about the deal. I don't know anything about what Mrs. Clinton may have known. This took place——

Senator FAIRCLOTH. I know you don't.

Mr. JENNINGS. —before I ever had any connection with the matter at all.

Senator FAIRCLOTH. I understand that, but you said she was a smart lawyer and capable lawyer. You are a smart lawyer. You live in Little Rock. Would you not have picked this up as a sham deal if you had been on the inside?

Mr. JENNINGS. If I had thought it was a sham deal, I never would have represented Mr. Ward and brought the lawsuit. I had a piece of paper indicating to me that was the deal, it was signed by Mr. McDougal. Nobody ever questioned that it was signed by him. In fact, it was admitted and undisputed it was signed by him. I had no reason to worry about why the deal came into existence, but I knew it was made and I brought a suit on it.

Senator FAIRCLOTH. You didn't question why Seth Ward would—I mean, McDougal would be willing to pay \$120,000 commission on a sale to Jim Guy Tucker?

Mr. JENNINGS. I had no idea of what sales had been made at the time I filed the lawsuit, and when I found out——

Senator FAIRCLOTH. You mean you filed a lawsuit without knowing what the commissions were supposed to be on?

Mr. JENNINGS. I filed the lawsuit upon the representation by Mr. Seth Ward that he was entitled under the agreement to in excess of \$300,000.

Senator FAIRCLOTH. What did he bring you to show you that he was entitled to \$300,000?

Mr. JENNINGS. He didn't bring me anything at that time.

Senator FAIRCLOTH. What if he had said \$800,000, would you have filed it for that?

Mr. JENNINGS. Probably. I subsequently, by way of discovery——

Senator FAIRCLOTH. You file lawsuits pretty easy then, \$300, \$800, if he says I want to sue him, you sue him?

Mr. JENNINGS. I file lawsuits when I think a client has a meritorious cause of action and I figure we will find out later what the details are and that's what we did, and it's stipulated in the lawsuit by answer to interrogatories that they made sales totaling \$3,600,000 and then we got details about it. I didn't have all that information at the time I filed the lawsuit.

Senator FAIRCLOTH. When you looked at the details, that didn't bring a lot of suspicion to you?

Mr. JENNINGS. Not the least.

Senator FAIRCLOTH. You were more interested in the lawsuit than you were in the reality of why McDougal would have paid a commission on these sales to his close friends?

Mr. JENNINGS. I didn't care why Mr. McDougal entered into that agreement. I only knew that he had entered into it.

Senator FAIRCLOTH. But in your heart of hearts, you knew it was a fake deal?

Mr. JENNINGS. I didn't know any such thing.

Senator FAIRCLOTH. Do you toss out \$120,000 commissions when you sell a piece of land to your close friends?

Mr. JENNINGS. I don't sell land to my close friends or anybody else, and if somebody was——

Senator FAIRCLOTH. Mr. Jennings, you and I are old enough to know——

Senator DODD. If we could give him a chance to answer.

Senator FAIRCLOTH. —to come to the reality—now, he brought you a deal. You said you didn't even look at it. You said it was \$300,000. If he had said \$800,000, you probably would have filed it. There isn't a man in the world that has your business experience or mine that doesn't look at that list of commissions and sales to close friends and know that no reasonable businessman would have paid 10 percent commission to sell a piece of his property to his close friend. There's no reason for it, it doesn't make sense. I thank you.

Mr. JENNINGS. I might have looked at that and wondered why a businessman would pay a million—\$1,200,000 for a sewer system, but I didn't know anything about it or what its value was. And I

didn't have that document until after we had engaged in discovery in the lawsuit, but when I finally did see it, I didn't see anything strange about it.

Senator FAIRCLOTH. I don't see how you got to be your age and don't see anything strange about that.

Mr. JENNINGS. You may not understand it, but that is the fact.

Senator FAIRCLOTH. If I looked at that and didn't see anything strange about it, I wouldn't admit it.

Mr. JENNINGS. Well, that's certainly your privilege.

Senator FAIRCLOTH. That's all.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. If we can put up on the Elmo pages 124 and 125 of Mr. Ward's deposition, and probably this is an appropriate time to read it in the record.

Now it's your understanding, Mr. Jennings, that there was a \$2 million profit that was earned in connection with the sale of these properties by Madison?

Mr. JENNINGS. In round figures. No, I was not under the impression that at the final windup that that was earned, but I was under the impression there had been sales totaling an amount that would have been about a \$2 million profit.

Mr. GIUFFRA. Over what was paid by Mr. Ward and by Madison Financial to the IDC?

Mr. JENNINGS. Yes, sir, exactly.

Mr. GIUFFRA. At his deposition—

Senator SARBANES. Why don't we provide Mr. Jennings with a copy of the deposition.

Mr. BEN-VENISTE. I suggest he might want to start looking at page 123 rather than 125.

Mr. JENNINGS. OK. Can you give me a page and line, please?

Mr. GIUFFRA. We'll start at page 122 because I think this is probably important to get on the record.

Mr. JENNINGS. I've got it.

Mr. GIUFFRA. This is Mr. Cole.

Question: And I take it, sir, if you take the \$3.7 million total sales and subtract the sales price of \$1.75 million, you're left with roughly \$2 million in profit; is that correct?

Answer: Yes, sir.

Mr. JENNINGS. I'm sorry, could you give me a line?

Mr. GIUFFRA. This is between line 8 and 11 on page 122. Do you have it, sir?

Senator SARBANES. Why don't we just indicate and then let Mr. Jennings read through it on his own and then come back to the questioning. That might be better. Mr. Jennings, why don't you take a moment or two and just read—how much of it are you going to cover?

Mr. GIUFFRA. I was going to just do the last page, but when Mr. Ben-Veniste indicated he wanted us to go earlier, I am happy to do that in the interest of completeness. And if we could stop the clock, perhaps?

Senator SARBANES. Mr. Jennings, why don't you read through pages 121, 122, 123 and on over to the next page.

Mr. JENNINGS. All right, sir.

Senator SARBANES. This is Seth Ward's deposition. Obviously, you are not familiar with it. So I think you should take some time to familiarize yourself.

[Witness reviewed the document.]

Mr. JENNINGS. OK.

Mr. GIUFFRA. Senator, I think it may be helpful to read it, the whole passage.

Senator SARBANES. Line 8 on page 122?

Mr. GIUFFRA. Correct.

Senator SARBANES. Do you have that, Mr. Jennings?

Mr. JENNINGS. Yes, sir.

Mr. GIUFFRA. Let me start at the beginning, and this is Mr. Cole:

Question: And I take it, sir, if you take that \$3.75 million total sales and subtract the sales price of \$1.75 million, you're left with roughly \$2 million in profit.

Answer: Yes, sir.

Question: And under your agreement with Madison, that's profit that Madison and Mr. McDougal was able to obtain, that they had not purchased the option from you and had you sold the property you would have had that profit; is that correct?

Answer: That's correct.

Question: And finally, the transactions that are listed there, and there are about a dozen of them including Fulbright, Jim Guy Tucker, Davis Fitzhugh, who negotiated those sales? Who arranged those sales of the property?

Answer: As far as I know, McDougal did.

Question: Did you have anything to do with that?

Answer: No, sir.

Question: And did you have anything to do with setting the sales prices of those parcels?

Answer: No, sir, I did not.

Question: Did you have anything to do with setting the terms of the financing that Mr. McDougal provided to those buyers?

Answer: I knew nothing of it whatsoever.

Question: And so your only role was that you felt you were entitled to a 10 percent commission on those sales?

Answer: And the principal being applied to my note.

Question: And that was the dispute that you had with Madison in your lawsuit at a later time, as to whether you were entitled to the—

Answer: That's correct.

Question: So if I'm understanding your testimony, Mr. Ward, when you sold Madison Guaranty the option on this property, the \$35,000, you gave—

Just so everyone understands, Mr. Jennings. Mr. Ward had given Madison an option on the 650 acres, the north portion of the property, the IDC property, and he was paid \$35,000 by Madison for that option.

Mr. JENNINGS. He was, after the lawsuit.

Mr. GIUFFRA. I'll continue:

The \$35,000, you gave up the right to profits on the sales, but you retained the right to earn your commissions; is that correct?

Answer: Not entirely. The principal amount they sold for would be applied to my note and then I get 10 percent commission.

Question: Right. You would get 10 percent commission on the sale. Did you, when you initially entered into this agreement with Mr. McDougal, Mr. Ward, did you feel you were engaging in a sham or an illegal transaction?

Answer: No, I did not. I had no reason to think that.

Question: And—

Answer: If I had, I wouldn't have done it.

Question: And there have been some reports which, including in the hearings that we've been conducting in the Senate, that this IDC property ultimately caused losses to Madison Guaranty Savings & Loan of some \$4 million. Did you play any part in the transactions that are described here that might have resulted in those loan losses?

Answer: No, sir, I did not.

EXAMINATION BY MR. GIUFFRA:

Question: The \$2 million profit Mr. Cole referred to, that was—you don't know whether that's a real profit that was earned by Madison Guaranty, do you?

Answer: I don't know.

Question: Because if Madison Guaranty sold the properties to the various purchasers at inflated prices, and then fully financed those sales, they would not be real sales of property?

Answer: I wasn't involved in the sales or the sale price or how it was transacted.

Question: So you don't know whether the \$2 million profit that Mr. Cole just referred to was an illusory profit?

Answer: I have no idea.

Question: You don't know whether that was—

Answer: Looking back from what I've read, in retrospect, I'd say that I assume the deals weren't on the up-and-up.

That's the end of the deposition.

Now, Mr. Jennings, if we could just briefly, go through the Castle Grande transaction, if we could put up chart number 1, which I think you have a copy of at your table. That one you have in your hand is chart number 1, in your right hand. You have it right there. That's on the screen right now.

If we could just briefly go through this transaction, sir, the way it was structured was that Mr. Ward would get the north portion of the property and Madison Financial would get the south portion of the property; is that right?

Mr. JENNINGS. That's my understanding, yes.

Mr. GIUFFRA. The north portion of the property consisted of 650 acres plus the sewer and water utility; is that right?

Mr. JENNINGS. That's my understanding, yes.

Mr. GIUFFRA. Now, Mr. Ward paid for his portion of the property with a \$1.15 million nonrecourse loan from Madison; right?

Mr. JENNINGS. That is my recollection, yes.

Mr. GIUFFRA. Mr. Ward was bearing no risk in this transaction?

Mr. JENNINGS. That is correct.

Mr. GIUFFRA. So that if he defaulted on his loans, the only recourse that Madison would have would be to obtain the property back from him?

Mr. JENNINGS. Mortgaged the property to them in security for the loan, yes.

Mr. GIUFFRA. So his personal assets were safe if he were to default?

Mr. JENNINGS. If he were to default, the property would belong to Madison.

Mr. GIUFFRA. And Madison Financial then paid \$600,000 for the 400 acres of the south portion of the property?

Mr. JENNINGS. That is correct.

Mr. GIUFFRA. If we could put up chart number 2, rather quickly after the closing of this transaction, which was October 4, 1985, Madison and Mr. Ward sold these properties. Throughout the hearings in the last several weeks, we have had discussion of these various transactions.

Senator Faircloth just recently went through some of the transactions and the commissions that were earned by Mr. Ward and that were the basis for the *Ward v. Madison* lawsuit. These sales involved a transaction to Master Developer, a \$472,000 sale, upon which Mr. Ward sought in your case a \$47,200 commission, another sale to Mr. Fitzhugh for \$500,000, for which Mr. Ward sought

a \$50,000 commission, another sale to Mr. Tucker, for which Mr. Ward sought a \$12,500 commission, another sale to Mr. Kuca for which Mr. Ward sought a \$12,000 commission, another sale to Mr. Fulbright for \$770,600, for which Ward sought a \$77,000 commission, and then a \$1.2 million transaction for which Mr. Seth Ward sought a \$120,000 commission.

Now if we could put up on the Elmo the commission account due Seth Ward that's dated July 1, 1986. Mr. Jennings, this was an exhibit at the trial, this document?

Mr. JENNINGS. I guess it was.

Mr. GIUFFRA. This was a document that Mr. Ward prepared?

Mr. JENNINGS. I believe that's correct.

Mr. GIUFFRA. So that what Mr. Ward essentially did was he totaled up the sales prices that were generated by Mr. McDougal and then believed that he was entitled to 10 percent of the sales price?

Mr. JENNINGS. I would assume that's correct.

Mr. GIUFFRA. If we could put up chart number 3. Were you aware, sir, at the time you were litigating this case that the sales that I just identified, the Fitzhugh sale, the Tucker sale, the Master Developer sale, the Kuca sale, the Fulbright sale, and the Castle Sewer & Water sale were all financed by Madison Guaranty?

Mr. JENNINGS. I'm sure at the trial I was aware of that.

Mr. GIUFFRA. In fact, with the exception of the Fulbright sale, they were all fully financed by Madison Guaranty?

Mr. JENNINGS. I may have been aware of that at the trial.

Mr. GIUFFRA. These were not transactions in which the purchaser of the property put down any money?

Mr. JENNINGS. I assume that's correct.

Mr. GIUFFRA. Would you consider those to be real sales of property, if no money is being put down, and in fact these were all nonrecourse loans?

Mr. JENNINGS. At the time I'd have certainly assumed that any transaction with Senator Fulbright was not a sham transaction.

Mr. GIUFFRA. But the other five transactions, sir.

Mr. JENNINGS. And any transaction—I understood that Mr. Jim Guy Tucker was involved in the sewer and water utility sale through some corporation, I may be mistaken about that, but that was my information, and I would not think that that was a sham transaction.

Mr. GIUFFRA. Did you investigate during the course of the *Ward v. Madison* trial in seeking the commissions whether those sales, the subsequent sales upon which Mr. Ward was seeking his commissions, whether those were sham sales or not?

Mr. JENNINGS. I accepted the answer to interrogatory by counsel for Madison that there had been sales totaling \$3,600,000 and some, and I didn't question that.

Mr. GIUFFRA. Who was the counsel for Madison, sir?

Mr. JENNINGS. A Ms. Shirley Bartlett and a Ms. Lyn Pruitt.

Mr. GIUFFRA. Now, sir, if the sales had been sham sales, OK, and that had been a defense that was raised at the trial, that would have affected Mr. Ward's right to those commissions; correct?

Mr. JENNINGS. If that had been raised at the trial and if the jury had found that that was true, then they would not have been entitled to return the verdict they did.

Mr. GIUFFRA. After you left the case, you had to recuse yourself after the collateral proceeding started in the appeal; right?

Mr. JENNINGS. Yes.

Mr. GIUFFRA. Did you follow the case thereafter?

Mr. JENNINGS. Certainly.

Mr. GIUFFRA. Were you aware of the fact that when the RTC took over the case, that an issue was raised and a defense was asserted on behalf of Madison, and actually the RTC, that Mr. Ward, an unclean hands defense was asserted?

Mr. JENNINGS. That what?

Mr. GIUFFRA. That an unclean hands defense was asserted.

Mr. JENNINGS. My understanding was that the collateral attack by the RTC was made because they cited a lawsuit that held that a transaction with a savings and loan that was not approved by the board of directors was invalid. And it wouldn't have made any difference whether it was a sham or not, it was the mere fact, as I understood it, that they contended that the board of directors had not approved the transaction and therefore it could not be enforced. That defense was never raised in the trial—

Mr. GIUFFRA. That you handled?

Mr. JENNINGS. That I handled.

Mr. GIUFFRA. But after the fact, wasn't there also a defense that was raised with regard to whether the initial transaction was set up in order to evade an investment limitation that limited the amount of money to 6 percent that Madison Guaranty could invest in Madison Financial?

Mr. JENNINGS. It was my understanding that the reason for the transaction or one of the reasons for the transaction being structured as it was was because Madison Financial could not handle the whole deal with loans from Madison.

Mr. GIUFFRA. Let me just read something from the Pillsbury Report on pages 53 and 54. Now the theory—

The investment in Castle Grande has been questioned on numerous grounds, but most of these have nothing to do with the Rose Law Firm. The acquisition of Castle Grande did, however, involve the Rose Law Firm to some extent. The acquisition can be questioned on the theory that Ward, having given Madison Financial an option on the land and having placed no money of his own at risk, was really a straw man purchaser from Madison Financial pursuant to a scheme to circumvent Arkansas law.

The CHAIRMAN. All right. Look, let me do this. This Report has been referred to, there are times when it is absolutely appropriate to do that. I think Mr. Jennings has answered to the best of his ability as it relates to this. This is a report that he may have heard about but there are things that—it's been referred to before. It speaks for itself and Mr. Jennings is not here to attempt to give testimony that he knows that the transactions that took place were or were not sham. He's here to testify as to the knowledge that he had, the representation that he gave, et cetera.

So let's stop. Let's finish it up because we've gone over and then we're going to turn it to the Minority. This is a very special day, all right? This is Valentine's Day, in that spirit I want to try to get out of here. Come on. Let's go.

Mr. GIUFFRA. The Chairman is a true romantic.

During your representation of Mr. Ward, did the issue of whether the initial transaction violated this Direct Investment Limitation Rule ever come up?

Mr. JENNINGS. Not to my recollection.

Mr. GIUFFRA. No further questions.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, let me start, Mr. Chairman, by bringing to Mr. Jennings' attention the conclusion further on in the report issued by Pillsbury Madison & Sutro from the same document Mr. Giuffra was reading from, at page 76 where it says, "There is no evidence that the Rose Law Firm had any hand in these loans and it is hard to imagine that any competent lawyer would have recommended this course of action."

Let me draw your attention to the transactions that have been placed on this Elmo machine, the financing of Castle Grande sales by Madison Guaranty. Let's put that back up. And let's start with the integrity of the heading on that chart. Do you have that chart in front of you?

Mr. JENNINGS. Yes, sir, yes.

Mr. BEN-VENISTE. Now, I'm talking about the one that lists six transactions. First of all, were these Castle Grande sales?

Mr. JENNINGS. No, I do not believe any of those were Castle Grande sales.

Mr. BEN-VENISTE. So what would you call these transactions if not IDC? Would there be any other generic designation you could give to them?

Mr. JENNINGS. They appear to me to be commercial transactions.

Mr. BEN-VENISTE. So whoever put Castle Grande on there wasn't being accurate on this chart?

Mr. JENNINGS. That's correct.

Mr. BEN-VENISTE. Let's go to the fundamental fairness of the points that were elucidated here earlier. Do you have any reason to believe that the Rose Law Firm, much less Hillary Clinton, was involved in either the negotiations or the documentation or the closing of any of these—let's leave that chart up, if you don't mind—the negotiations, the documentation, legal advice relating to any of these transactions?

Mr. JENNINGS. I have no reason to believe that she or any member of the Rose Firm was so involved.

Mr. BEN-VENISTE. Nor do we have any documentation to suggest that. How do you get from the Rose Law Firm had nothing to do with these transactions, no knowledge of them, no work on them, to the fact that Mrs. Clinton being a good lawyer should have known that these were all shams?

Mr. JENNINGS. I believe I previously testified I have no idea what Mrs. Clinton knew or didn't know.

Mr. BEN-VENISTE. In the absence of any evidence that would suggest to you that Mrs. Clinton had any knowledge of these transactions, whether they're shams or they're not, and you've voiced your opinion certainly with respect to some of them, how could any reasonable person come to the conclusion that she should have known that there was something improper?

Mr. JENNINGS. I don't think you could. I don't think a reasonable person could.

Mr. BEN-VENISTE. Now with respect to Mr. Ward's deposition testimony, I would like to call your attention to page 116 on the issue of the nonrecourse loan. If we can put that up, we can follow along.

Mr. JENNINGS. OK. I have the right one. Page 116?

Mr. BEN-VENISTE. Right.

Mr. JENNINGS. I now have that.

Mr. BEN-VENISTE. At the very top of the page. And this is the discussion under oath in Mr. Ward's deposition earlier this week about the nonrecourse nature of the loan.

Answer: Well, it was nonrecourse but the property was worth—certainly worth the collateral.

Question: Now, did you have the financial wherewithal back in 1985 to purchase the entire property yourself?

Answer: Yes.

Question: Did you go to any banks to try to find out whether you could get a loan for the full purchase price of the entire thing, which would have been about \$1.75 million?

Answer: No, it was \$1.7 million.

Question: I know. \$1.7 million. Did you ever try to see whether you could get a loan for \$1.7 million?

Answer: I knew I could.

Question: From another bank?

Answer: Yes.

Question: Did you speak to any other banks about getting a loan for \$1.7 million?

Answer: Yes.

Question: Which banks did you speak to?

Answer: I don't know that this is germane, but I'll answer your question, Union Bank.

Question: And they were willing to give you a loan?

Answer: Why sure. I had good credit with them. I would have had no trouble financing a million or 2 million.

Question: Did you go to Madison because they offered better terms than—

Answer: No, I didn't go to Madison because they offered me better terms. I told you why I went to Madison.

Question: Were the terms identical that were being offered by other banks?

Answer: No, they weren't identical.

Question: Which terms were better?

Answer: I went to Madison because, as I told you, I was going to buy it all by myself, but I wanted to run it by McDougal. And I'll reiterate what I told you previously. When I told him, he said, "Well, at that price, maybe we could share it." And I asked him what he had in mind. And he told me.

Now, is that consistent with your understanding in terms of the recourse nature?

Mr. JENNINGS. Totally.

Mr. BEN-VENISTE. Indeed, there wasn't any foreclosure against Mr. Ward?

Mr. JENNINGS. Oh, no.

Mr. BEN-VENISTE. And indeed the nonrecourse nature of the loan was never an issue, was it?

Mr. JENNINGS. Not to my knowledge.

Mr. BEN-VENISTE. Because it had been bought at bargain base-ment prices and it was disposed of by Mr. Ward for a profit?

Mr. JENNINGS. Well, it wasn't disposed of by Mr. Ward, it was disposed of by Mr. McDougal. Mr. McDougal had a meeting with Mr. Ward on February 25, as I recall, 1986, in which he advised Mr. Ward that the sales had now reached a point where only \$70,000 of indebtedness was left on Mr. Ward's note, and that he was going to mark that note for \$1.1 million, .15, whatever, paid in full and wanted Mr. Ward to execute a note to him for the bal-

ance of \$70,000 that Mr. McDougal said was still owed on the original note.

Mr. Ward did execute that note, and at that time it was represented to Mr. Ward that the reason that they were crediting the note down to \$70,000 was that they had sold the Castle Water & Sewer and applied \$450,000 of that sale price to his note and that they had applied the \$680,400 of the sale to Senator Fulbright against his note which made a total of \$1,103,000, I guess it would be \$1,130,400 left, and they were computing it on a \$2 million note and I guess that included interest. And that would leave a balance due of \$70,000.

Mr. BEN-VENISTE. Now was there any indication from anything that you heard from Mr. Ward about those transactions that would suggest that Mrs. Clinton was in any way, shape or form involved in those transactions, much less "right in the middle of it"?

Mr. JENNINGS. Not at all. In fact, Mr. Ward wasn't involved in the transactions.

Mr. BEN-VENISTE. The commission agreement that you referred to was the subject of the lawsuit, Mr. Ward contended that he had a commission agreement which entitled him to be paid on the basis of the sales that were made because of the role Mr. Ward had had in finding the property and negotiating the purchase price?

Mr. JENNINGS. That's correct.

Mr. BEN-VENISTE. And the jury and the judge agreed with that position; correct?

Mr. JENNINGS. Well, I don't know whether the judge did, but—

Mr. BEN-VENISTE. The judge didn't overrule it after the jury had spoken?

Mr. JENNINGS. He certainly did not.

Mr. BEN-VENISTE. The judge has that right in Arkansas, does he not, to set a jury verdict aside on the basis—

Mr. JENNINGS. Oh, yes, he denied that motion.

Mr. BEN-VENISTE. Mr. Chairman, we would yield back the time.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. I just have one question, Mr. Jennings. How many times did you come to Washington last year, in 1995?

Mr. JENNINGS. I don't know.

Senator FAIRCLOTH. Make a guess.

Mr. JENNINGS. I'm not going to guess because I don't know.

Senator FAIRCLOTH. Three times, 30 times?

Mr. JENNINGS. I made a guess at the time when my deposition was taken which turned out to be wrong and I am not doing any more guessing.

Senator FAIRCLOTH. All right, Mr. Chairman. Wait a minute. Let me ask one more question. You don't know who paid for the trip when you met with Mrs. Clinton?

Mr. JENNINGS. I do not. I assume that my firm paid for it. Whether they after that charged it to any client for whom I was coming to Washington, I do not know.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank the witnesses for their testimony and for their cooperation, and Ms. Dickey, you, for putting hopefully an end to that kind of speculative situation that existed. I'm

sorry that we had to bring it up but we did feel it would be better to end it. And I think you probably feel better that we did it.

Ms. DICKEY. I hope it's ended.

The CHAIRMAN. Thank you.

Mr. Jennings, thank you.

We stand in recess until 10:00 a.m. tomorrow.

Senator SARBANES. What's our program for tomorrow?

The CHAIRMAN. At 10:00 tomorrow morning.

Senator SARBANES. Who will we be hearing from?

Mr. JENNINGS. Are we excused? These materials that have been furnished to me for me to look at, shall I leave those here?

The CHAIRMAN. You can or you can take them as a memento.

Mr. JENNINGS. I was wondering about Mr. Ward's deposition.

The CHAIRMAN. You can take that, certainly.

Mr. JENNINGS. The rest I don't believe I need.

[Whereupon, at 12:25 p.m., the hearing was concluded.]

[Appendix supplied for the record follows:]

DATE	ROOM	VISITEE	VISITOR	FNAME	DOB	ARR. TIME
950808	RES	SCOUTEN	AHRENS	JANET	122655	14:08
950808	RES	SCOUTEN	BONIHORECI	ENRIQUE	121870	14:08
950808	RES	SCOUTEN	DOWNING	MARY	031380	14:08
950809	RES	WHITE	ALLEN	LAURA	042183	15:38
950809	RES	WHITE	ALLEN	MARIE	082723	16:40
950809	RES	WHITE	ALLEN	MARILYN	060951	16:41
950809	RES	WHITE	HATCHER	ELIZABETH	100364	16:39
950809	RESIDENCE	MOELLER	HAYNES	EVIN	092981	16:41
950809	RES	LOTUS	KENDALL	DAVID	050244	16:41
950809	RESIDENCE	MOELLER	ADAMSON	KYLE	071061	16:41
950809	RESIDENCE	MITCHELL	THOSTRUP	LOUISE	122275	8:27
950809	RESIDENCE	MOELLER	HAYNES	KATIE	070783	11:14
950809	RES	MARIANO	COOPER	AMY	042977	11:11
950810	RESIDENCE	SCOUTEN	TRECHSEL	GAIL	101889	10:04
950810	RESIDENCE	MITCHELL	HALL	JAMES	031835	10:04
950810	RESIDENCE	MONKMAN	SHEATON	SUZANNE	111752	10:04
950810	RESIDENCE	SCOUTEN	TRECHSEL	HAYDN	032354	10:04
950810	RES	LOTUS	JENNINGS	ALSTON	030117	13:57
950810	RESIDENCE	GRIER	SHICKLEY	GLENN	01358	9:55
950810	RESIDENCE	MOELLER	KOULOU	ALLISON	72883	10:04
950810	RESIDENCE	MESNIER	NOWE	DENNIS	041956	10:04
950810	RESIDENCE	MARIANO	WILLIS	SHARON	23153	10:04
950810	RESIDENCE	MONKMAN	WILNER	ELI	021356	14:48




S 020085

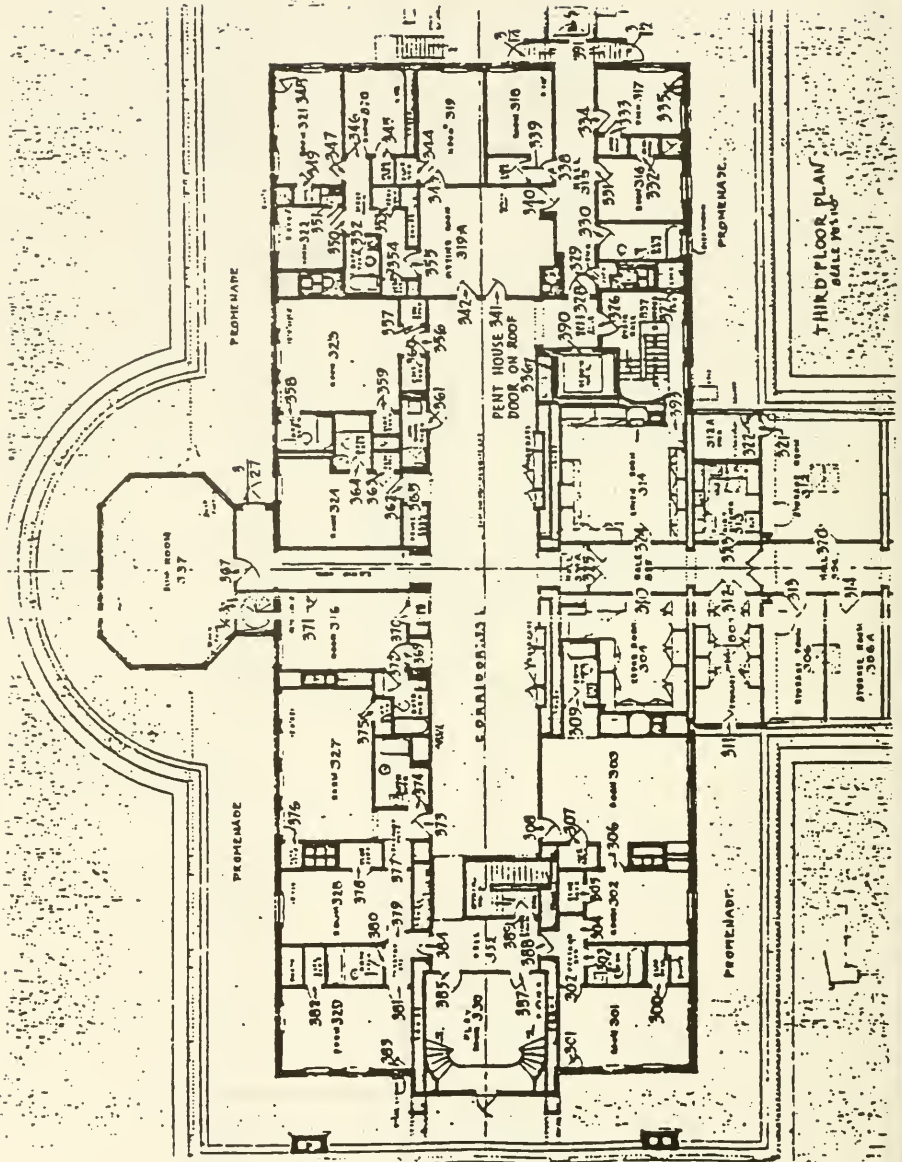
REPORT NO	WAV07785	WAVES	VISITOR SUMMARY FOR 9: 00	TIME DATE	LOC ROOM	REQUESTOR	BADGE	ID#	PDA
RUN DATE	93/09/01								
VISITOR	VISITEE	VISITUB	UTB	13	930807 W REB	HOPPER	J	340A32	1537 B04
	ALSTON	FLOTUB							
	JEJENINOS								



REPORT NO	WAVG 785	NAME		LOC. NO	447
RUN DATE	93/09/01	VISITOR SUMMARY IN 93-08		EDGE	TOA POA
VISITOR		IN TIAL DATE LOC ROOM		REQUESTOR	
PHASES	SUSAN	8710 1300 930824 C 164		CURRY	
		VISITEE			
		CURRY			



S 020561



September 24, 1985

Mr. Jim McDougal, President
Madison Financial Corporation
15th and Main
Little Rock, Arkansas 72201

Dear Jim:

This letter is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock.

On or about the 13th day of September, 1985, Madison Guaranty Savings and Loan Association agreed to acquire all of Industrial Development Company of Little Rock's property except the Timex Building. In the agreement, Madison has the right to assign its rights to that agreement to any entity or individual. As part of our agreement, I have agreed to take title to all of the assets and property north of 145th Street, the water and sewer improvements, and the water and sewage treatment ponds south of 145th Street. Madison Guaranty Savings and Loan Association will agree to lend me on a non-recourse basis the purchase price secured only by a mortgage of those parcels and the sewer and waterworks.

Madison Guaranty will have an option for at least 270 days to purchase the property from me at any time for the amount of the note plus all accrued interest. It is the intention of both Madison and myself to attempt to develop all of the property acquired from I.D.C., and sell it as quickly as possible. If there is any purchase of the property or any portion thereof during the 270 day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of any sale will be applied toward the promissory note, less a ten percent commission to be paid to me if the property is sold by me, or at Madison's discretion, the particular piece of property may be deeded back to Madison prior to the execution of the sales transaction. If it is sold by anyone else, then the proceeds will go to Madison Guaranty, less the commission to the other seller, and a four percent commission to me.

It is also agreed, in addition to the salary I am receiving from Madison Guaranty, on all property acquired from I.D.C. sold either by me or by Madison Guaranty after the exercise of Madison's option, or on that portion of the property already acquired by Madison from I.D.C., I shall receive a ten percent commission on said sale if it is sold by me, and four percent commission if it is sold by anyone else.

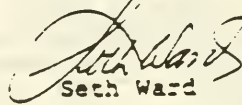
SEN 30363

Page -2-
Mr. Jim McDougal
September 24, 1935

During the term of the option period, all of the net revenues of the waterworks and sewer department shall be forwarded directly to Madison Guaranty for application toward the note.

I would appreciate your acknowledging and agreeing to the terms of this letter agreement.

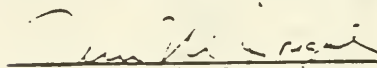
Sincerely,



Seth Ward

SW:SS

Acknowledged and accepted:



Jim McDougal, President
Madison Financial Corporation.

SEN 30364

Bein Ward
43 River Ridge
Little Rock, Arkansas 72107

September 24, 1965

Mr. James B. McDougal, President
Madison Financial Corporation
14th and Main Streets
Little Rock, Arkansas 72101

Dear Mr. McDougal:

This is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock and certain improvements thereon.

On or about the 18th day of September, 1965, Madison Guaranty Savings and Loan Association agreed to acquire all of the Industrial Development Company of Little Rock's property except the grounds and building commonly referred to as the Times Building. In the agreement Madison has the right to assign its rights to any entity or individuals. In part of our agreement, I have agreed to take title to all of the assets of the aforementioned property that is located immediately north of 14th Street, the water and sewer improvements, and the sewer treatment ponds, including the one located south of 14th Street. Madison Guaranty Savings and Loan Association will agree to lend me the purchase price for this property secured by a mortgage of those parcels and the sewer and water works. Madison Guaranty will pay \$35,000.00 to me to have an option for at least 170 days from the date of acquisition to purchase the property from me at any time, in whole or in part, for at least the pro rata amount of the note plus all accrued interest; except one parcel described as follows:

Approximately 11 1/2 acres located and referred to as the Northeast Quadrant of the Interchange of Highway 63 and 14th Street. More specifically described in the attached legal description which is a part of this agreement.

It is the intention of both Madison and myself to attempt to develop all the property acquired from I.D.C. and sell it as quickly as possible. If the property or any portion thereof is sold during the 170 day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of the sale will be applied toward the promissory note, less a 10% sales commission to be paid to me. At Madison's discretion,

SEN 13094

SWL-005

PLAINTIFF'S
EXHIBIT

4
97-7590

Mr. James G. McCougal
 September 14, 1983
 Page -1-

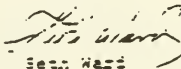
any particular piece of property may be deeded back to Madison prior to the execution of a sales transaction.

It is also agreed, in addition to the salary I am receiving from Madison Financial Corporation, I will receive 10% sales commission on all property sold, regardless who sells it, except residential property that will be located south of 145th Street, in which case I will receive 4% commission if sold by any other person.

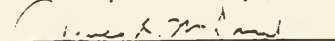
During the term of the option period, all of the net revenues of the water works and sewer department shall be forwarded directly to Madison Guaranty for application toward the note, unless such facilities are sold sooner. Madison Financial Corporation will also be responsible for all taxes, special assessments, dues, insurance premiums, etc. during the period of this option.

I would appreciate your acknowledging and agreeing to the terms of the letter of agreement.

Sincerely,


 Seth Ward

Acknowledged and accepted:


 James E. McCougal, President
 Madison Financial Corporation

SEN 33095

JW1-006

Addendum to Agreement Between
 Seth Ward and James B. McDougal
 September 14, 1965

(Little Rock South Industrial Park, NE Corner 65-167 & 145th)

LEGAL DESCRIPTION -

Part of Tracts 27 & 28, Holman Acres, Pulaski County, Arkansas, more particularly described as: Starting at the intersection of the north right-of-way line East 145th Street and the west right-of-way line of Dineen Drive, said point also being the Southeast corner of the Birch-Brooks, Inc. property; thence N 0 deg. 21 min. E along the west right-of-way of Dineen Drive 373.12 ft. to the Northeast corner of said Birch-Brooks, Inc. property and the point of beginning; thence N 39 deg. 30 min. 30 sec. W, along the north line of said Birch-Brooks, Inc. property 303.50 ft. to the Northwest corner thereof, thence S 0 deg. 03 min. 30 sec. W along the west line of said Birch-Brooks, Inc. property 333.25 ft. to a point on the north right-of-way line of U. S. Highway No. 65-167; thence N 23 deg. 33 min. 10 sec. W, along said north right-of-way line, 111.57 ft. to a point; thence N 39 deg. 39 min. 40 sec. W and continuing along said north right-of-way line, 530.87 ft. to a point; thence N 54 deg. 01 min. 10 sec. W and continuing along said north right-of-way line 111.19 ft. to a point on the east right-of-way line of said U. S. Highway No. 65-167; thence N 2 deg. 24 min. 44 sec. W along said east right-of-way line 411.61 ft. to a point; thence S 39 deg. 35 min. E along the south property line of the Selmons-Allen, Inc. property and said south line extended Westerly, 1191.02 ft. to a point on the west right-of-way line of Dineen Drive; thence S 0 deg. 21 min. W along said west right-of-way line 110.33 ft. to a point; thence Southwesterly and continuing along said west right-of-way line, being the arc of a 713.66 ft. radius curve to the right, having a chord bearing and distance of S 8 deg. 21 min. W, 199.23 ft. to a point; thence S 15 deg. 11 min. W and continuing along said west right-of-way line, 10.0 ft. to a point; thence Southwesterly and continuing along said west right-of-way line, being the arc of a 713.79 ft. radius curve to the left having a chord bearing and distance of S 8 deg. 21 min. W, 199.23 ft. to a point; thence S 0 deg. 21 min. W and continuing along said west right-of-way line, 25.88 ft. to the point of beginning, containing 22.6649 acres more or less.

OPTION TO PURCHASE REAL ESTATE

This Option granted this 1st day of May, 1986, by SETH WARD and YVONNE ANNA WARD, his wife (collectively "Grantor"), to MADISON FINANCIAL CORPORATION ("Optionee"),

W-I-T-N-E-S-S-E-T-H:

1. GRANT OF OPTION. In consideration of Optionee's payment to the Grantor of One Thousand Dollars (\$1,000.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor hereby grants to Optionee an exclusive and irrevocable Option to Purchase the following described property together with all buildings and improvements thereon, situated in the City of Little Rock, Pulaski County, Arkansas, to-wit:

A tract of land located in the NE 1/4 SW 1/4 Section 24, T-1-S, R-12-W, Pulaski County, Arkansas, more particularly described as: Starting at an iron pin marking the intersection of the North right-of-way line of East 145th Street and the West right-of-way line of Dineen Drive; thence S89° 44' 40" E along said North right-of-way line, 22.75 ft.; thence Southeasterly and continuing along said North right-of-way line, being the arc of a 2,915 ft. radius curve to the right having an arc distance of 559.07 ft.; thence S78° 45' 20"E and continuing along said North right-of-way line, 2724.44 ft. to the point of beginning of the tract of land described herein; thence N 11° 14' 40" E and perpendicular to said North right-of-way line, 522.72 ft. to a point; thence S78° 45' 20"E and parallel

SW1-070

with said North right-of-way line, 555.56 ft. to a point; thence S11° 14' 40" W and perpendicular to said North right-of-way line 522.72 ft. to a point on said North right-of-way line; thence N78° 45' 20" W along said North right-of-way, 555.56 ft. to the point of beginning, containing 290,402.32 sq. ft. or 6.6667 acres more or less.

2. PURCHASE PRICE. The purchase price for the property hereinabove described, together with all improvements thereon, shall be Four Hundred Thousand Dollars (\$400,000.00).

3. EXPIRATION DATE. This Option shall expire at 6:00 o'clock, P.M., Central Time, on August 1, 1986.

4. FAILURE TO EXERCISE OPTION. If Optionee does not exercise this Option as herein provided, all sums paid by him hereunder shall be retained by the Grantor free of all claims of Optionee, and neither party shall have any further rights or claims against the other.

5. EXERCISE OF OPTION. This Option shall be exercised by Optionee's delivering to the Grantor written notice of such exercise on or before the expiration date, or any extension thereof, or by Optionee's mailing such written notice of exercise by certified mail to Grantor at least two days before the expiration date, or any extension thereof; and such notice, if so mailed, shall be deemed valid and effective whether or not it actually is delivered to Grantor prior to the expiration date, or any extension thereof.

6. CLOSING REQUIREMENTS. In the event of Optionee's exercise of this Option:

a. Closing will occur within 30 days after the exercise of this Option, which date may be extended by mutual agreement;

b. The Grantor shall deliver at closing to Optionee, or his nominee, a general warranty deed conveying good and marketable title in fee simple to the aforesaid premises, free and clear of all liens, encumbrances and tenancies, except those for streets and utilities and tenancies which may be disclosed by Grantor to Optionee prior to the granting of this Option;

c. Taxes and assessments, if any, due on or before the closing date shall be paid by Grantor. Taxes and assessments, if any, for 1986 shall be prorated as of the closing date;

d. Grantor, at Grantor's sole expense, shall furnish Optionee, within 30 days after exercise of the Option, a complete abstract certified to a current date, or at Grantor's option, a commitment for an owner's title insurance policy convertible at closing to an owner's policy issued on ALTA Form B, 1970, reflecting merchantable title satisfactory to Optionee's attorney. In the event an abstract is furnished and an examination of title to said

property shall disclose that the same is not good and marketable, and if the cause of such unmarketability shall not be removed by Grantor prior to the date fixed for closing, then Grantor may exercise his option to furnish Optionee a policy of title insurance satisfactory to Optionee. If marketable title cannot be conveyed at closing, any monies paid by Optionee on account of the purchase price of said property, including any sums paid as consideration for the granting of this Option, shall be refunded to Optionee;

e. The risk of loss, damage, condemnation, or destruction of the premises or improvements thereon by fire, or otherwise, until closing shall be on Grantor;

f. Revenue stamps to be placed on the Deed shall be at the expense of Grantor.

7. PAYMENT OF PURCHASE PRICE. At closing, Optionee will pay Grantor in cash an amount equal to the purchase price set out in accordance with Paragraph 2 hereof.

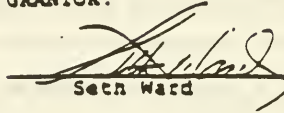
8. NOTICES. Any notices required hereunder shall be effective if given to the parties hereto at the following addresses, or such other address as either party may subsequently designate in writing:

OPTIONEE: Madison Financial Corporation
1308 South Main
Little Rock, Arkansas 72201

GRANTOR: Seth Ward
16th & Main
Little Rock, Arkansas 72201

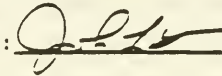
9. ASSIGNMENT. This Option, before or after its exercise, may be assigned by Optionee without the prior written consent of Grantor.

GRANTOR:


Seth Ward

OPTIONEE:

MADISON FINANCIAL CORPORATION

BY: 

SW1-074

1 Q. It states, "For the Board of Directors of Madison Financ.
2 Corporation Net" --

3 A. Let me save you a lot of trouble.

4 Q. Okay.

5 A. 06 what?

6 Q. 062. There's another one, another identical resolution,
7 that's numbered 069.

8 MR. ROWE: If it will help --

9 Q. What I tried to do, Mr. Ward, was copy yours like I did
10 mine so we would be together. I did not copy like Roger suppli
11 them is the reason....

12 MR. ROWE: Mr. Ward, if you're looking for the
13 attachments to those, in my copies I've got them the way they
14 were with your files.

15 Q. Have I messed them up?

16 MR. ROWE: There's two different options attache
17 to different ones of those, if that's what you're looking for.

18 A. Well, let me look at something a minute.

19 Q. What I have --

20 A. I can see where you're concerned.

21 Q. I have two resolutions and two different pieces of
22 property.

23 A. The resolutions they wrote had the wrong legal
24 descriptions. After it was put together, I called that to Don
25 Denton's attention, and he had document 063 prepared, and it wa

SEN 33210.83

- 1 signed by John Latham. And I don't believe it has a resolution
- 2 Q. So what happened was they put the wrong property
- 3 description in the resolution?
- 4 A. That's right.
- 5 Q. And Mr. Denton substituted the first two pages, which you
- 6 and somebody initialled. Is that John Latham? I can't tell.
- 7 Jim McDougal? I can see "S.W."; I assume those are your
- 8 initials?
- 9 A. It would be John Latham, I guess.
- 10 Q. Well, whose idea was it for them to take an option to the
- 11 property?
- 12 A. Jim McDougal's.
- 13 Q. Do you know why he wanted to do that?
- 14 A. Yeah. I think we discussed it earlier this morning.
- 15 Q. He wanted the property?
- 16 A. Sure he did. Choice property.
- 17 Q. Do you know what property this description belongs to --
- 18 A. Uh-huh.
- 19 Q. -- on the resolution? What property is it?
- 20 A. That property that we deeded back to Madison the day we
- 21 closed. When we bought the property, they sold to -- it had the
- 22 Levi Strauss building on it.
- 23 Q. The property that was sold to David Fitzhugh?
- 24 A. Uh-huh.
- 25 Q. In other words, they intended to take an option on Tracts

WRIGHT, LINDSEY & JENNINGS
ATTORNEYS AT LAW

200 WEST CAPITOL AVENUE
SUITE 2200
LITTLE ROCK, ARKANSAS 72201-3699

(501) 371-0808

FAX (501) 378-8442

OF COUNSEL
ALSTON JENNINGS
RONALD A MAY

February 9, 1996

BETTINA E BROWNSTEIN
WALTER MCSPADREN
ROGER O. ROWE
NANCY BELLHOUSE MAY
JOHN O. DAVIS
JUDY SIMMONS HENRY
KIMBERLY WOOD TUCKER
HARRI L. PRYOR
RAY F. COX JR.
HARRY S. HURST JR.
TROY A. PRICE
PATRICIA SIEVERS LEWALLEN
JAMES M. MOODY JR.
KATHRYN A. PRYOR
J. MARK DAVIS
CLAIRE SHOWS HANCOCK
DEVIN W. KENNEDY
MARK A. ROGERS
JERRY J. SALLINGS
FRED W. BERKINS III
WILLIAM STUART JACKSON
MICHAEL O. BARNES
STEPHEN R. LANCASTER
JUDY M. ROBINSON
BETSY MEACHAM
AINSLEY H. LANG
KYLE R. WILSON
DON S. MCKINNEY
MICHELLE L. SIMMONS
KRISTI M. MOODY

EDWARD L. WRIGHT
(1903-1977)
ROBERT S. LINDSEY
(1913-1981)
ISAAC A. SCOTT, JR.
JOHN G. LILE
GORDON S. RATHER, JR.
TERRY L. MATHEWS
DAVID M. POWELL
ROGER A. GLASGOW
C. DOUGLAS BUFORD, JR.
PATRICK J. GOSS
ALSTON JENNINGS, JR.
JOHN R. TISDALE
KATHLYN GRAVES
H. SAMUEL JONES III
JOHN WILLIAM SPIVEY III
LEE J. MULGROW
H. M. NORTON, JR.
EDGAR J. TYLER
CHARLES C. PRICE
CHARLES T. COLEMAN
JAMES J. GLOVER
EDWIN L. LOWMYER, JR.
BEVERLY BASSETT SCHAFER
CHARLES L. SCHLUMBERGER
SAMMYE L. TAYLOR
WALTER E. MAY
ANNA MIRAI GIBSON
GREGORY T. JONES
H. KEITH MORRISON

Viet D. Dinh
Associate Special Counsel
Committee on Banking
Washington, D.C. 20510-6075

BY FACSIMILE
202-228-0020

Dear Mr. Dinh:

Based upon a news story in today's Arkansas Democrat-Gazette and a telephone call that I received this morning from a reporter, it is apparent that the press has access to information concerning which I testified in my deposition. Since I do not have a transcript of my deposition, it is shocking to me that the press already has it.

I respectfully request that I be provided with a copy of the transcript of my deposition in ample time for me to review it before my scheduled appearance before the Committee on Thursday, February 15, 1996. I believe that I was advised that I was entitled to have a transcript four days before an appearance before the Committee. I could be mistaken about that, but that is certainly my impression.

Yours very truly,

WRIGHT, LINDSEY & JENNINGS


Alston Jennings

AJ/ivs
cvs1323.003

DATE 2/9/96PAGE A16

The Washington Post

First Lady Met Arkansas Figure's Lawyer In Month That Billing Records Appeared

By Susan Schmidt
Washington Post Staff Writer

Last August, first lady Hillary Rodham Clinton met at the White House residence with a Little Rock lawyer who was representing a main figure in a controversial Arkansas real estate deal that Clinton had worked on as a private attorney. It was around that time that long-subpoenaed legal billing records detailing her work on the project mysteriously turned up on a table in the White House residence.

White House logs obtained by the Senate Whitewater committee show that on Aug. 10, attorney Alston Jennings visited the first lady in the White House residence. Jennings's clients include Seth Ward, an Arkansas businessman whom bank regulators have identified as a "straw" purchaser in the thousand-acre Castle Grande project near Little Rock. Called a "sham" by bank examiners, the mid-1980s project caused millions of dollars in losses to Madison Guaranty Savings & Loan, a former client of Clinton and her law firm.

Clinton's meeting with Jennings—whom the White House and her private lawyer declined to discuss yesterday—was discovered as Senate investigators attempt to reconstruct movements in and out of the White House residence during the period when her billing records suddenly appeared in a small area known as the "book room."

Sought under subpoena for more than two years, the records include details of Clinton's work on the Castle Grande project—a matter she had said in a sworn statement she could not remember and recently has said she knew under another name.

Since the records surfaced, the Senate committee has homed in on Clinton's billings for work she did with Ward, a Madison officer, on the Castle Grande transactions.

Jennings's White House visit last year occurred less than a week after

and other work it had done for the thrift—when the firm was hired by the government to sue Madison's auditors to try to recover taxpayer funds lost as a result of Madison's failure.

The White House last night referred questions about Jennings's visit to David E. Kendall, private attorney for the Clintons, but he declined to comment. "I've got nothing to say," Kendall said. "I've just got nothing to say. I have no comment. If I'm doing legal work I don't comment."

Jennings, reached at his Little Rock office yesterday, said his visit to the White House did not concern Castle Grande but declined to comment further. In a deposition with committee lawyers this week, he said Kendall had asked him to meet with him and Hillary Clinton at the White House. They did not discuss Ward, he said.

The billing records surfaced last month in the East Wing office of Carolyn Huber, the Clintons' director of correspondence. Huber told the Senate panel that sometime during the first two weeks of August she went to the book room to box up knickknacks and memorabilia to take to her own office for filing.

She said she picked up the shelf of billing documents, in plain view on a table, thinking they were to be filed. Huber, a former office manager at the Rose firm, testified that she recognized them as billing records, but she did not look at them or realize they were the Madison records that had been subpoenaed by Whitewater independent counsel Kenneth W. Starr and other government investigators.

Huber said she took the box to her office, stuck it under a table and didn't get around to looking through it until Jan. 4 of this year.

Yesterday, Kendall and special White House counsel Jane Sherburne were called before the Senate committee to testify about the discovery of those records. Under questioning, both acknowledged that they realized that the 116-page document—and the circumstances of its discovery after two years—would be of great interest to Starr and the committee.

Sherburne said she raised the issue of whether Starr would want to fingerprint the document and questioned whether they should turn it over to Starr immediately before photocopying it.

After a discussion, she, Kendall and a lawyer for Huber decided to examine and copy the documents and to notify Starr and the Senate committee the following day.

Republicans contended they had knowingly made it more difficult to obtain fingerprints from the records. It is not known at this point whether Starr's

office has obtained any identifiable prints from the billing records.

"We may never know precisely how the documents got there," Kendall told the panel. "This may be another of the meaningless mysteries of Whitewater."

Kendall and Sherburne also described Huber as deeply shaken and upset after finding the records. Sherburne said in a deposition with committee lawyers that "Ms. Huber said to me that she was really upset and she just didn't know if she had done the right thing."



JANE SHERBURNE

... testifies about discovery of records

And I said, "What do you mean by that?" And she said, "I didn't know what to do when I found these today and maybe I should have just thrown them out." And I said, "... You did the right thing."

Also yesterday, the committee released the two-year-old handwritten meeting notes of former White House communications director Mark Gearan, reflecting the intense damage-control efforts to contain the Whitewater story, which stemmed from the Clintons' partnership in a real estate venture with the owner of Madison Guaranty.

At the meeting, White House aides had discussed sending someone to Arkansas to talk to Beverly Bassett Schaller, the former state securities commissioner who had publicly insisted that she felt no political pressure to act in ways that would benefit Madison despite Hillary Clinton's role in representing the thrift before her agency. They decided against it after deputy chief of staff Harold Ickes said he feared such a move was bound to "come out" publicly.

Staff writer Bill McAllister contributed to this report.

FOR MORE INFORMATION

To read a chronology of Whitewater events, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 202-334-4740.

Acquisition of Castle Grande Property from IDC

October 4, 1985



Sale of Castle Grande Property By Seth Ward & Madison

IDC

\$1.75 million
(1,050 acres)

Ward/MFC



Chart 2

COMMISSION ACCOUNT - DUE SETH WARD JULY 1, 1936

(RE: SALE OF PROPERTY ACQUIRED FROM LITTLE ROCK INDUSTRIAL DEVELOPMENT CO.)

RED TOP MOTEL \$145,000.00 @ 10 1/2% \$14,500.00

LARRY KUCA \$120,000.00 @ 10% 12,000.00

DENNY PIGE \$30,000.00 @ 10% 3,000.00

FULBRIGHT \$777,600.00 @ 10% 77,760.00

MASTER SERVICES \$472,000.00 @ 10% 47,200.00

(S.E. INTERCHANGE GUARANTEE)

JIM. EBY TUCKER \$125,000.00 @ 10% 12,500.00

(S.E. INTERCHANGE GUARANTEE)

DAVIS FURNISH \$50,000.00 @ 10% 5,000.00

J.E. TUCKER \$120,000.00 @ 10% 12,000.00

(CASTLE WATER & SEWER)

27 RESIDENTIAL LOTS \$220,000.00 @ 4% 12,960.00

\$3,648,600.00

\$350,720.00

349,720.00

LESS PAYMENTS

- \$300,000.00

- \$10,000.00

DUE

\$40,720.00

\$39,720.00

SEN 33175

The Financing of Castle Grande Sales by Madison Guaranty

Sale	Sale Price	Financing by Madison
6.6 acres + Levi Strauss building to Davis Fitzhugh	\$500,000	\$475,000 nonrecourse loan \$50,000 commission
35 acres to Jim Guy Tucker	\$125,000	\$260,000 nonrecourse loan
59 acres to Master Developers, Inc.	\$472,000	\$424,800 loan \$47,200 commission
9 acres to Larry Kuca	\$120,000	\$108,000 loan
486 acres to J.W. Fulbright	\$770,600	\$700,000 loan
Sewer & Water Utility to Castle Sewer & Water Co.	\$1.2 million	\$1.05 million loan \$150,000 loan from Cap. Mgmt. (funds traceable to Madison)

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, FEBRUARY 15, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:10 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

We have a procedure that the Majority and the Minority both have agreed to in order to expedite the hearings, and cut down on the number of witnesses and the number of depositions.

We have agreed to a procedure for narrowing down the number of people who may have had or possibly could have had access to the Book Room where Ms. Huber found the billing records. We have, by way of that agreement, issued interrogatories to assist the Committee in determining if any of the people who may have had access indeed saw them, had access to them, knows of anyone who may have had them, knows how they got there.

This will speed up the work of the Committee and help us find out who placed the billing records in the Book Room. I haven't decided whether those questions should be released, although there is nothing secret about them.

But there are questions such as whether the White House overnight guests were ever in the room, and if so, who or what did they see, did any of the guests see, handle or discuss the Rose Law Firm billing records while in the White House, and did these guests see, handle or discuss the Rose Law Firm billing records prior to their discovery on January 4th.

As I said, these interrogatories were prepared and sent out last evening. I think there were 38, and we won't disclose names at this time because I think it would just create some unnecessary speculation. Nothing should be attributed to the fact that we sent out interrogatories—these people were in the White House during this period of time. So it is an effort to, again, narrow and determine if they have any knowledge with respect to the billing records.

The Majority and the Minority both agreed. It is a housekeeping detail, and I thought that I would share it with you.

Now that Senator Sarbanes is here, I think we can proceed. Mr. Gearan, do you have any statement that you would like to make for the record?

**SWORN TESTIMONY OF MARK D. GEARAN
DIRECTOR, PEACE CORPS
FORMER WHITE HOUSE DIRECTOR OF COMMUNICATIONS**

Mr. GEARAN. Mr. Chairman, I do not. I am here to answer any questions you may have.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Gearan, do you have before you a set of documents with the Bates numbers S20564 through S20585? Do you have those?

Mr. GEARAN. Yes, just 1 minute, Mr. Chertoff. These were just given to me. Are they all together here, S20564 through?

Mr. CHERTOFF. Through S20585.

Mr. GEARAN. Yes.

Mr. CHERTOFF. And these are your handwritten notes with the redactions?

Mr. GEARAN. If these are the notes I had at my deposition Monday evening, these are all my notes, yes.

Mr. CHERTOFF. They are in your handwriting?

Mr. GEARAN. Yes.

Mr. CHERTOFF. When did you first turn them over to the White House or to the Senate?

Mr. GEARAN. Well, they were turned over by the White House. My understanding, they were turned over by the White House to the Senate Committee.

Mr. CHERTOFF. When did you turn them over to the White House?

Mr. GEARAN. I turned them over to the White House on the 31st of January.

Mr. CHERTOFF. Of what year?

Mr. GEARAN. This year, sir.

Mr. CHERTOFF. They were not turned over in 1994 to the White House?

Mr. GEARAN. Correct, sir.

Mr. CHERTOFF. They were not turned over in 1995 to the White House?

Mr. GEARAN. Not until January 31.

Mr. CHERTOFF. They were not turned over in 1994 to the White House?

Mr. GEARAN. No, they were not.

Mr. CHERTOFF. Were they turned over in 1995?

Mr. GEARAN. Yes, sir—I am sorry, 1996, correct.

Mr. CHERTOFF. Listen. They were not turned over in 1994; right?

Mr. GEARAN. Correct.

Mr. CHERTOFF. They were not turned over in 1995; right?

Mr. GEARAN. If I might, Mr. Chertoff—

Mr. CHERTOFF. Please Mr. Gearan, it is a very simple question. Did you turn these notes over to anyone in the White House for production to anybody in 1995, yes or no?

Mr. GEARAN. In 1995 these were in the White House, and I left the White House in August 1995.

Mr. CHERTOFF. Where were they in the White House?

Mr. GEARAN. They were in my office.

Mr. CHERTOFF. Did you turn them over to anybody who was responsible to produce documents to the Senate or to the Independent Counsel, or to any other investigative body, in 1995?

Mr. GEARAN. No, I did not. They were inadvertently taken to my office at the Peace Corps.

Mr. CHERTOFF. But even before they were taken, they were in your office in the White House; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. While they were in your office in the White House, you didn't turn them over to anybody for purposes of making any kind of production to any investigative body or agency; is that correct?

Mr. GEARAN. Mr. Chertoff, when I was in the White House, for the purposes of production to this Committee or the Independent Counsel or anyone, that production was responsive to the individual request that I was given at that point in time.

Mr. CHERTOFF. There was a point in time in 1994, 1995, that you looked at these notes and you made a decision they were not called for by any request for production?

Mr. GEARAN. These were files that I had segregated in my office for the purposes of the relevant authorities that were looking into this matter. And I did not produce them at that time in consultation with my counsel as they were not responsive.

Mr. CHERTOFF. OK, so you made it just—because we are—you raised the issue of inadvertence. You are telling us sometime in 1984 and 1985 before you left the White House—

Mr. GEARAN. No, 1994.

Mr. CHERTOFF. Listen to me, Mr. Gearan. Sometime during the period from 1984 until you left the White House in 1985, did you make a decision about these particular notes, that they were not responsive to any requests for documents from any investigative agency?

Mr. GEARAN. Assuming you mean 1994 instead of 1984—

Mr. CHERTOFF. I'm sorry, 1994 and 1995.

Mr. GEARAN. —during that period of time, I maintained these files in the Communications Office, and they were at that point not produced as they were not responsive.

Mr. CHERTOFF. In other words, it wasn't that you didn't look at them, you looked at them and you made a decision in 1994 and 1995 before you left the White House that these were not responsive to a request; right?

Mr. GEARAN. I don't recall looking at them, to be honest, but they were in the files that were segregated, yes.

Mr. CHERTOFF. Segregated for purposes of being looked at to make productions to Grand Juries or Senate Committees or House Committees; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. They somehow wound up going with you to the Peace Corps?

Mr. GEARAN. Correct.

Mr. CHERTOFF. Who packed them up?

Mr. GEARAN. My staff at the White House.

Mr. CHERTOFF. Most of these notes before you reflect meetings that occurred during the period from January 4, 1994 through January 8, 1994; correct, except for the last few pages?

Mr. GEARAN. Yes. That's that period of time; correct.

Mr. CHERTOFF. During that period of time there were daily meetings about Whitewater that you attended?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Were there any meetings later in January about Whitewater?

Mr. GEARAN. I don't recall any. I know the President went on a foreign trip and I accompanied him, in the second week, I believe, in January.

Mr. CHERTOFF. What about the third and fourth weeks, did you have meetings in the third and fourth weeks of January, like you did in the first week of January?

Mr. GEARAN. I don't recall. I don't have any notes to that effect.

Mr. CHERTOFF. Do you know whether there were any notes you have that haven't been produced?

Mr. GEARAN. No, I do not.

Mr. CHERTOFF. Now, Mr. Gearan, this meeting on January 4th, who called the meeting?

Mr. GEARAN. I don't recall who called the meeting as my notes indicate it was in Mr. McLarty's office, but I don't know who called the meeting.

Mr. CHERTOFF. Without holding you to everybody who was there, you were there?

Mr. GEARAN. Correct.

Mr. CHERTOFF. Mr. McLarty was there?

Mr. GEARAN. At this meeting, yes.

Mr. CHERTOFF. Mr. Eggleston was there?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Mr. Nussbaum was there?

Mr. GEARAN. I believe so.

Mr. CHERTOFF. There came a time the First Lady was there?

Mr. GEARAN. At this meeting, yes, sir.

Mr. CHERTOFF. How did she come to be at the meeting?

Mr. GEARAN. As I recall, she just happened into Mr. McLarty's office.

Mr. CHERTOFF. Do you know how she knew there was a meeting in progress about Whitewater?

Mr. GEARAN. No, I do not.

Mr. CHERTOFF. I want to take you through some of the notes and it will take awhile to go through all of them, so I will start with some of the highlights. Would you agree with me that on January 4th, one of the topics of conversation was the position the White House ought to take on the appointment of an Independent Counsel to investigate Whitewater?

Mr. GEARAN. Yes. At that time, there had been considerable editorial and Congressional commentary and requests for the President to call for a Special Counsel.

Mr. CHERTOFF. Everybody in that room as of January 4th who participated in the discussion understood that there was an ongoing

ing Grand Jury investigation in Arkansas that included focusing on Whitewater and Madison; isn't that correct?

Mr. GEARAN. That is what my notes indicate. Mr. Eggleston, at the beginning, summarized the circumstance.

Mr. CHERTOFF. Mr. Eggleston, in fact, informed everybody who was at the meeting, at that point in time, that there were documents which were in the possession of the White House that might have relevance to the Grand Jury for investigation of either Madison or Whitewater; correct?

Mr. GEARAN. I don't know, Mr. Chertoff, that that's documents at the White House. I would read that documents may have relevance for investigation. This proceeded immediately after the President turned over the documents to the Department of Justice at the end of December.

Mr. CHERTOFF. He was referring to the documents that had been turned over at the end of December?

Mr. GEARAN. That's how I would read that, sir.

Mr. CHERTOFF. So there was an understanding that there was an active Grand Jury investigation going on that was seeking documents and that was examining Madison and Whitewater; correct?

Mr. GEARAN. Seeking documents?

Mr. CHERTOFF. It was understood in the meeting that there was an active Grand Jury investigation going on, that the Grand Jury was obtaining documents, and that they were looking at the issue of Madison and Whitewater; correct?

Mr. GEARAN. I don't know that it was understood they were looking for documents. I don't recall that part.

Mr. CHERTOFF. Well, they had subpoenaed documents.

Mr. GEARAN. I don't recollect that from this meeting, sir.

Mr. CHERTOFF. There were documents that had been turned over that were relevant to the Grand Jury?

Mr. GEARAN. Yes.

Mr. CHERTOFF. I can see you are not going to want to move too far outside the notes, but the notes do say documents may have relevance to the Grand Jury; right?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Now on page 2, somebody says, "Risk of AG getting out front in naming a counsel before White House leadership." Is that a correct reading of the top of that page?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Who said that?

Mr. GEARAN. My notes would seem to indicate it was Joel Klein because there is not any notation otherwise, but I can't recall.

Mr. CHERTOFF. And—

Mr. GEARAN. From the previous page.

Mr. CHERTOFF. Right, and then down the page, almost at the end on page 2, there is a DG. Is that David Gergen?

Mr. GEARAN. Yes.

Mr. CHERTOFF. He says, "Independent Counsel operates differently than criminal prosecutor. They take on a life of their own." Is that a correct reading?

Mr. GEARAN. Yes, it is.

Mr. CHERTOFF. Am I correct that the concern was that an Independent Counsel could pursue matters, so to speak, without control

by anybody else, like the Attorney General, or anybody in the Administration?

Mr. GEARAN. No, Mr. Chertoff. I don't recall it as a matter of control. It was a matter that it tends to go on for a long period of time. There was a concern about both the duration of some Independent Counsels in the past, as well as the digression from its original charge.

Mr. CHERTOFF. You mean the scope; there was concern about the scope?

Mr. GEARAN. I don't know if there was concern relevant to this specific matter as much as a historical review of these meetings evidenced from the Counsel's Office of what has happened in past Special Counsels or past Independent Counsels.

Mr. CHERTOFF. Mr. Gearan, you were not meeting for the purpose of having a historical discussion about the institution of the Independent Counsel, were you? You were meeting with respect to a decision that had to be made about the position the White House would take on requesting an Independent Counsel; correct?

Mr. GEARAN. Correct; but in that discussion, a historical review of past counsels was observed.

Mr. CHERTOFF. The particular concern was the duration and scope; right?

Mr. GEARAN. Those were the points that were mentioned, yes.

Mr. CHERTOFF. Mrs. Clinton comes in; right? This is on page 3.

Mr. GEARAN. That's correct.

Mr. CHERTOFF. It says, "Looks like a meeting I might be interested in." Is that right?

Mr. GEARAN. That's right.

Mr. CHERTOFF. Then she stayed for about 10 or 15 minutes?

Mr. GEARAN. That's my recollection, yes.

Mr. CHERTOFF. Your note taking at this point stops, except for the comment, "Watergate Committee"?

Mr. GEARAN. Right.

Mr. CHERTOFF. What did Mrs. Clinton say about the Watergate Committee?

Mr. GEARAN. As I recall the conversation, Mrs. Clinton was distinguishing her service as a member of the Watergate Committee on the staff with the present context, and their disagreement with the calls for a Special Counsel were well reported in the press. What I've tried to help the Committee with, and that is, that they did not feel—she did not feel there was any wrongdoing on their part, or that she was aware of, and that the particular standard for past Independent Counsels had not been established in this instance. And she was distinguishing the difference in the instance of the Watergate matter.

Mr. CHERTOFF. Where is all that in the notes?

Mr. GEARAN. It is not, sir; that's my recollection.

Mr. CHERTOFF. Is there some reason you didn't take notes when the First Lady came in, except to make the reference to Watergate Committee?

Mr. GEARAN. I guess my only point that I could assist you with is I found the discussion very interesting and I was listening intently to the conversation.

Mr. CHERTOFF. So at this point it got so interesting you forgot to write it down; is that what you are telling us?

Mr. GEARAN. Well, I think at this point I was listening quite intently to the First Lady, yes.

Mr. CHERTOFF. Now the next day, which is on the next page, the discussion continues; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Bernie Nussbaum has a fairly extended conversation on his views about the Independent Counsel; right?

Mr. GEARAN. That's right.

Mr. CHERTOFF. He was adamantly opposed to it; right?

Mr. GEARAN. Yes, sir.

Mr. CHERTOFF. Did you know, as of the 5th of January, that 2 months earlier Mr. Nussbaum had met with private attorneys for the Clintons, Mr. Kendall and other attorneys, essentially having a kind of a joint defense meeting with respect to the Whitewater matters?

Mr. GEARAN. No, I am not aware of that.

Mr. CHERTOFF. So he didn't enlighten anybody on the 5th of January that almost exactly 2 months earlier, on the 5th of November, he had sat down with Mr. Engelberg, Mr. Lyons, and Mr. Kendall to have a discussion about Whitewater and Madison, and various issues relating to the investigations that might impact on the Clintons; he didn't bring that up at the meeting, did he?

Mr. GEARAN. That is not my—I don't recall, no, sir.

Mr. CHERTOFF. But he did adamantly oppose an Independent Counsel at the meeting?

Mr. GEARAN. Correct.

Mr. CHERTOFF. He said, this is the second entry, "If appoint outside as counsel or prosecutor, subject to no control and come in with desire to get someone." Is that what he said?

Mr. GEARAN. Yes.

Mr. CHERTOFF. He raised the issue of an Independent Counsel not being subject to control; correct?

Mr. GEARAN. His argument, as I recall from the time, was that an Independent Counsel or a Special Counsel at this point was somewhat of an unguided missile.

Mr. CHERTOFF. Meaning they couldn't be controlled?

Mr. GEARAN. No.

Mr. CHERTOFF. Does the word "no control" appear in your notes, Mr. Gearan?

Mr. GEARAN. It does, sir, but I think, as I recall the conversation, it was a circumstance where he was, as these outlines later, it tends to go on and on, both for the duration of it and for the context of it.

Mr. CHERTOFF. And the scope of it; right?

Mr. GEARAN. Right; and then he outlines, on the bottom of that page, past instances——

Mr. CHERTOFF. I understand there are things you want to say but you will have to follow with my questions.

So Mr. Nussbaum raises the issue of no control over an Independent Counsel, and then he basically outlines two possible scenarios; right, that could come about. Under one scenario, you have what he calls a good-hearted Nussbaum who is appointed. So I

guess that was kind of the wish to have a good-hearted Bernie Nussbaum appointed to be the Independent Counsel, who would worry about how he goes back to New York City and doesn't indict anyone, and then after 3 years he writes a report. That's the good scenario. Then the bad scenario is the bad-hearted guy—it says, "Bad-hearted guy goes in and decides a smell of corruption and can show some things of those people close around principal." Now the principal here refers to the President?

Mr. GEARAN. I think the principal, any principal that was being investigated.

Mr. CHERTOFF. But here the focus is on a particular issue involving Whitewater, you understood the principal here to be the President?

Mr. GEARAN. Yes.

Mr. CHERTOFF. What Mr. Nussbaum is saying here is that the bad-hearted Independent Counsel smells some corruption and can show there are some things involving people close around the principal. That was the bad scenario?

Mr. GEARAN. That's his view of the two types of people that could be an Independent Counsel, and I recall his—the context or his view is that if you had someone, in his words the bad-hearted counsel, it would be very difficult and they would be embarrassed of going back without having charged someone.

Mr. CHERTOFF. No, that was the good-hearted Nussbaum. That's the earlier paragraph. The good-hearted Nussbaum would worry about going back without indicting someone. I am now on the bad-hearted one. The bad-hearted guy actually smells corruption; right? Is that right? Is that what it says?

Mr. GEARAN. That's what it says.

Mr. CHERTOFF. Then "can show some things of those people close around principal." Did Mr. Nussbaum elaborate on the kinds of things that this bad-hearted prosecutor could show involving people close around the principal?

Mr. GEARAN. No, he did not. It was just his very affirmative argument against an Independent Counsel. Because of its, as I have said previously, its duration, its digression, that there are past instances where it went beyond perhaps what some people thought about it. I am certainly aware, I have been in Washington for a bit, that there is some controversy associated with—

Mr. CHERTOFF. Mr. Gearan, please stay on the questions I ask you. My question is very specific. When he raised the fact that the bad-hearted prosecutor might detect a smell of corruption and can show some things of those people close around the principal, meaning the President, did you react to that in some way? Did you ask questions about what people are we talking about here? What is the concern?

Mr. GEARAN. Mr. Chertoff, I never heard it as an individual concern with any factual basis to this matter. It was a hypothetical about the two different types of counsels or Special Counsels that could be named. It was more of a generic discussion as I heard it and recalled it.

Mr. CHERTOFF. All right. Now after this discussion of the two scenarios, the two possibilities, the good-hearted prosecutor goes back and defends his decision not to indict and the bad-hearted one

who smells corruption can show some things, then there is a discussion of past Independent Counsels. It concludes, on the top of page 3, with an entry from Mack. That would be Mack McLarty; is that right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. He says, "Let's get off whether we will have Special Prosecutor or Counsel. HRC and BC don't want it, discuss where we go from here." Was it your understanding that Mr. McLarty was telling you that as of the 4th of January the First Lady and the President both had decided they didn't want an Independent Counsel?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Was it your understanding that the decision was in part up to the First Lady?

Mr. GEARAN. No.

Mr. CHERTOFF. Wasn't there a point in time, within a couple of days, that there was a specific discussion about whether the First Lady could be persuaded to approve the appointment of an Independent Counsel?

Mr. GEARAN. There are notes reflecting that, yes.

Mr. CHERTOFF. We will skip ahead while we are on the subject. Those notes, if we skip ahead to page S20578, this is on the 7th of January, where Mr. Ickes says, "To try to reopen it with us, impossible, POTUS can't, staff can't, Christopher to talk to FLOTUS, Bob Barnett." FLOTUS is the First Lady of the United States; is that correct?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. POTUS is the President of the United States?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. What Mr. Ickes told you on the 7th was that the President and the staff had been unsuccessful in getting the First Lady to change her mind about the Independent Counsel appointment; right?

Mr. GEARAN. I don't know, "unsuccessful," but——

Mr. CHERTOFF. They found it impossible?

Mr. GEARAN. To reopen it, that she was opposed to it, yes.

Mr. CHERTOFF. Let's make sure it is absolutely clear. On the 7th of January, Mr. Ickes told you and the others at the meeting that the First Lady was adamantly opposed to an Independent Counsel; is that correct?

Mr. GEARAN. He doesn't say "adamantly," but that's my recollection, sir.

Mr. CHERTOFF. That's your recollection. That it would be impossible to reopen it with the First Lady; right?

Mr. GEARAN. That's what my notes reflect.

Mr. CHERTOFF. That's what happened; right? Because you didn't lie to your notes; right? You kept an accurate record?

Mr. GEARAN. I did.

Mr. CHERTOFF. He said the POTUS can't, the President of the United States couldn't get the First Lady to change her mind on this; right?

Mr. GEARAN. That's what my notes are saying.

Mr. CHERTOFF. The staff couldn't do it; is that right?

The CHAIRMAN. Mr. Gearan, let me ask you one thing. You keep saying, "That is what my notes say." Are you telling us you have no recollection of this? The Deputy Chief of Staff comes in, this is like the third or fourth in a series of meetings, this is not just anything. And you are telling us that you don't recall Mr. Ickes saying that the First Lady will not change her mind as it relates to a Special Prosecutor, the President of the United States cannot get Mrs. Clinton to change her mind? Now, you are telling us you cannot remember that? Your notes say it.

Mr. GEARAN. Senator——

The CHAIRMAN. I mean, that is such an inconsequential matter that you wouldn't recall it?

Mr. GEARAN. Senator, I guess what I am suggesting is, I was aware this week that there was an internal discussion within the White House of whether we should have one or not. It had been well reported, I think——

Mr. CHERTOFF. I don't want to know about the press——

Mr. GEARAN. To answer the Chairman's question, I am not certain that this is the first time.

The CHAIRMAN. The question is whether you recall Mr. Ickes saying this. To indicate that's what your notes say is not responsive. When you respond in that manner, you lose credibility. You promised to tell the truth and the whole truth, and I don't believe that you are being responsive when you tell us, "That's what my notes say." We know your notes say that and we are asking you an important question about a meeting, it wasn't just one meeting, it wasn't a casual meeting, the First Lady was present, and there were a series of meetings. And your only response is, "That's what my notes say." You didn't lie to your notes, your notes don't lie, and we are asking you to assist the Committee by giving us information. Did Mr. Ickes come in and say this?

Mr. GEARAN. Senator——

The CHAIRMAN. You have no independent recollection beyond the notes?

Mr. GEARAN. Senator, I have tried my very best in this Committee——

Mr. CHERTOFF. All right, Mr. Gearan——

Mr. GEARAN. If I might, Mr. Chertoff—to present in deposition, the best I can, to recollect my recollections of this period of time. It did not—and I am not sure this is the first time in the history of this planet that a husband and wife have disagreed on something.

The CHAIRMAN. I didn't ask you that, Mr. Gearan. It has nothing to do with whether this was the first time in history spouses disagreed. Do you recall this conversation? This was a report made by the Deputy Chief. We asked you, do you recall this? And you said, "That's what my notes say." That's nonresponsive.

Mr. CHERTOFF. Mr. Gearan, you are not suggesting this was a garden variety dispute between a husband and wife, are you? This was about whether an Independent Counsel gets appointed; right?

Mr. GEARAN. Correct.

Mr. CHERTOFF. This is not an insignificant matter; right?

Mr. GEARAN. No, I would not——

Mr. CHERTOFF. Now, I want to ask you whether you recall this conversation in which the Deputy Chief of Staff—and by the way, Mr. Ickes was one of the people who was tasked or was supposed to be responsible for managing Whitewater; right?

Mr. GEARAN. That's correct, at this point in time.

Mr. CHERTOFF. He says to you, with respect to this very contentious issue and public issue, that the President finds it impossible to reopen with the First Lady the possibility of appointing an Independent Counsel; isn't that correct?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Didn't you find that remarkable and memorable? Whose decision was it to appoint——

Mr. GEARAN. Mr. Chertoff, the best I can help you with, and the Members of this Committee, is my best honest recollection. And that's what I am trying to do.

Mr. CHERTOFF. Whose decision was it about whether to ask for an Independent Counsel? Who had the final say on it?

Mr. GEARAN. I do not know the answer to that. I know the President called for it. I mean, I was not present in a conversation with the President and Mrs. Clinton.

Mr. CHERTOFF. As you go to the bottom of the page, since we are on the 7th, there is a portion that's redacted. And I just want to state for the record, we have agreed with the White House that the portions that are redacted relate either to discussions about the press or other things that are extraneous. But down here at this meeting, Mr. Nussbaum speaks up and says, "Indictments will be Betsey Wright." Do you remember that?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Now this was Mr. Nussbaum discussing kind of the worst case scenario that might come out; right? Is that right, if there was an Independent Counsel?

Mr. GEARAN. No. Mr. Chertoff, I think I owe it to Betsey Wright and to the Members of this Committee to say that at no time was I present in any conversation where Mr. Nussbaum suggested that there is any basis for Ms. Wright to be charged with anything like this. He was using this as an extreme example of someone who would be shot by the unguided missile, if you will. That this would be an extreme example of an unwarranted prosecution.

Mr. CHERTOFF. Where does it say that in the notes?

Mr. GEARAN. It does not but that is the flavor of that remark as I recall it.

Mr. CHERTOFF. Out of all the people in the world he picked to show an extreme example, he didn't pick you, he didn't say well, an unguided missile could indict Mark Gearan, did he? He did not say that; right?

Mr. GEARAN. He did not say that, no.

Mr. CHERTOFF. He didn't talk about indicting Donald Duck?

Mr. GEARAN. I don't recall that.

Mr. CHERTOFF. Or a ham sandwich?

Mr. GEARAN. No, sir.

Mr. CHERTOFF. But he did mention Betsey Wright; is that right?

Mr. GEARAN. Yes, that's right.

Mr. CHERTOFF. And your testimony is that you took that as just an extreme example, pulled out of thin air; is that it?

Mr. GEARAN. What I am suggesting is, he gave no basis to say that there was any factual basis that she would be charged with anything. Mr. Nussbaum's entire argument, as we reviewed in the earlier notes, is that the kind of range and duration and digression of an Independent Counsel, and the unguided missile——

Mr. CHERTOFF. That it couldn't be controlled. "Unguided" meaning uncontrolled; right?

Mr. GEARAN. I do not recall that way in the control sense you suggest.

Mr. CHERTOFF. From the conversation, Mr. Gearan, you have talked about an Independent Counsel as an unguided missile. What would be an example of a guided missile, and who would be guiding? Did that come up in the conversation?

Mr. GEARAN. No, it did not. I don't recall that.

Mr. CHERTOFF. Let's go back to the notes. We were on January 5th; page 20569. It's the third page of this meeting on the 5th.

Mr. GEARAN. Yes.

Mr. CHERTOFF. This is after Mr. McLarty indicates that the First Lady and the President don't want an Independent Counsel. Then there is some further discussion about the possibility of preparing some kind of a white paper or some kind of a report; right?

Mr. GEARAN. That's right.

Mr. CHERTOFF. And Mr. McLarty suggested like the Travel Office Report?

Mr. GEARAN. That's right.

Mr. CHERTOFF. The Travel Office Report was an internal review that had been done of the Travel Office, or Travelgate matter, the previous year; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Now that was something that was done in-house; is that right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. That was Mr. McLarty's suggestion; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Then Mr. Ickes goes on to say——

Mr. GEARAN. If I might, sir, I do not know that it was his suggestion, but that's his observation, that it would be similar to it. I don't know that he——

Mr. CHERTOFF. Then Mr. Ickes goes on to say, "Discussion of counsel is the biggest [expletive deleted] waste of time." Right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. That's because at this point in time he understood or you understood the First Lady and the President had said no to it; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. On the next page, page 4, Mr. Kendall says, "In a couple of hours—drafts of Q&A's they need to be approved by Kendall and HRC." These would be Q&A's for public consumption on the issue of Whitewater?

Mr. GEARAN. Mr. Chertoff, that's Mr. Klein, not Mr.——

Mr. CHERTOFF. I'm sorry, Mr. Klein.

Mr. GEARAN. They are Q&A's, yes, that would be drafted on the subject matter; correct.

Mr. CHERTOFF. The idea was to have them personally approved not only by Mr. Kendall but by Mrs. Clinton herself; right?

Mr. GEARAN. That's what my notes reflect, yes.

Mr. CHERTOFF. What was the reason for that, for Mrs. Clinton to be involved in reviewing these Q&A's?

Mr. GEARAN. I assume because it involved matters associated with her law practice.

Mr. CHERTOFF. Because it involved matters associated with her law practice?

Mr. GEARAN. The issue was the—I believe at the time the centerpiece of the issue in the press at the time was the preferred treatment for Madison Guaranty.

Mr. CHERTOFF. You mean her possible discussions with Beverly Bassett Schaffer?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. And you understood at this point in time that involved the question of what she did in her law practice; right?

Mr. GEARAN. Correct.

Mr. CHERTOFF. So that the decision was she would take a personal role in reviewing the Q&A's on this particular matter; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. So it is fair to say with respect to this set of meetings, one of the focuses of the meetings was this particular issue of Mrs. Clinton's law practice and how it related to Beverly Bassett Schaffer and Madison Guaranty Savings & Loan; correct?

Mr. GEARAN. Mr. Chertoff, the focus of the meeting is—it was a procedural meeting of what we do from here. There was not, as I recall, any discussion of the substance of her representation or Madison Guaranty. It was where do we go from here in terms of providing these Q&A's.

Mr. CHERTOFF. But the reason she had to be involved was because you understood that a particular area of concern for her was her law practice and this issue involving Beverly Bassett Schaffer, and any contacts between Mrs. Clinton and Ms. Schaffer?

Mr. GEARAN. Mr. Chertoff, I don't know that that was a concern to her. I do know that we were trying to work very hard in this period to make sure that we were presenting accurate materials out of the White House, and if we were preparing Q&A's or chronologies or any of the other materials, that it be accurate so the White House would not misstate any facts in any statements we would release.

Mr. CHERTOFF. We are going to get to Beverly Bassett Schaffer when we come back to this, but let me leave you with this question, because I am sure we are going to hear from you that one of the important things here was to get all the facts out into the public. Isn't it a fact though that you understood, and there was discussion at these meetings, that Mr. Kendall had negotiated a subpoena with the Department of Justice in December to turn the documents over, precisely in order to keep those documents out of public scrutiny, so they couldn't be put out to the public?

Mr. GEARAN. I understood it at the time that it was a question of confidentiality.

Mr. CHERTOFF. Meaning confidentiality from the public?

Mr. GEARAN. Correct, that the materials would be preserved and given to the investigators directly.

Mr. CHERTOFF. So there was no notion with respect to those documents of making them public at that time?

Mr. GEARAN. Correct.

Mr. CHERTOFF. I see my time is up.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Gearan.

Mr. GEARAN. Good morning.

Mr. BEN-VENISTE. Let me start with the issue of the production of the documents here today. And if you have something to add to a question I might ask, I invite you to finish your answer and to add what information you feel is pertinent to the question.

If I understand you correctly, the materials were indeed reviewed at some point with respect to the then-existing requests by this Committee for material relevant to the hearings we were undertaking last summer. Those hearings were the Foster papers matter and contacts with the Treasury Department; is that correct?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. When those documents were reviewed, they were reviewed by you and your counsel?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. And as the result of that review, it was determined, if I understand you correctly, that nothing in the notes was relevant to the requests associated with those areas of inquiry?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. Then those documents were put aside somewhere, segregated?

Mr. GEARAN. Correct.

Mr. BEN-VENISTE. Now tell us what happened after that.

Mr. GEARAN. In late August, when I left the White House to take a bit of a vacation, my office was packed up by staff at the White House. I then returned from my vacation and went directly to my job as the Director of the Peace Corps. During the course of this period of time, it was my intention, certainly, to leave the documents, because I understood them to be White House communications files, at the White House. That was certainly my intent to leave them there.

I have worked hard to try to maintain their integrity and my staff was instructed that they would not leave the White House. I understood them to be Communications Office files. They were segregated, but as I said, I did not pack my office and they were inadvertently moved to the Peace Corps where I started after Labor Day.

Mr. BEN-VENISTE. So if I understand what you are saying, you assumed that the materials had been left; the White House, in going through its request, assumed they had everything that you had; in fact, someone had packed the files and inadvertently included the files in material that went to the Peace Corps with you?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. Then there came a time when it was discovered that you might have additional files in your possession at the Peace Corps. How did that come about?

Mr. GEARAN. At the beginning of November, when there was a request for production of files, my counsel called me to see if there was anything that could be relevant to that. At that time, I realized that, in the storage area where the files were sent over from the White House, that in fact the separate, segregated Communications Office files were still there.

Mr. BEN-VENISTE. How did you learn that? How did it happen that on that occasion you learned that you still had the file?

Mr. GEARAN. Well, my counsel called me because he was aware of the subpoena request, that was not issued to me personally but to the White House. When I left the White House, it was my understanding that the White House would be in charge of the production of any of the Communications Office files. And in what I think was an abundance of caution at that point, we looked and discovered that they had been, as I said, inadvertently taken to the Peace Corps.

Mr. BEN-VENISTE. Were they promptly turned over as soon as you realized?

Mr. GEARAN. At that point, I notified my counsel and we notified the White House. I instructed my staff to send them over to the White House, but regrettably, they were not—that was not done.

Mr. BEN-VENISTE. So we received them last week, and indeed, I think on the day before White House Special Counsel, Ms. Sherburne testified. And she testified to the fact that she and others in Counsel's Office had redacted those files; that means they photocopied out portions which they deemed not relevant to the request of this Committee. Are you aware of that fact?

Mr. GEARAN. Yes, I am.

Mr. BEN-VENISTE. Thereafter, in fact during the testimony of Ms. Sherburne, she invited Counsel from the Majority and Minority to review those redactions to determine whether there was any additional material which we might wish to see. Are you aware of that?

Mr. GEARAN. Yes, I am, sir.

Mr. BEN-VENISTE. Then Mr. Chertoff and I did so, in the presence of Ms. Sherburne and other staff. And it was determined that additional material would be requested, and it was provided, without opposition, by the White House Counsel's Office. You are aware of that?

Mr. GEARAN. Yes, sir.

Mr. BEN-VENISTE. Much of the material about which you have testified already this morning was in that category, the political discussion about appointment of Special Counsel and the like. Mr. Chertoff and I concluded that Ms. Sherburne acted appropriately in terms of making the redactions, and that she acted appropriately in terms of our request that they expand the production, and that there was no attempt to hide or mislead this Committee. I think Mr. Chertoff will join me in that, if he is paying attention.

The CHAIRMAN. We are not going to comment on the redaction. We resolved that and are satisfied. And we hope that the manner in which we settled this will allow us to continue to proceed orderly. I don't want to address possible disagreements concerning

things that have been produced. I want to move forward and continue to receive cooperation so that relevant information is made available to the Committee in the future. I believe we are proceeding properly.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Now with respect to the discussion about Mrs. Clinton's, and others in the White House, opposition to the appointment of a Special Counsel at that point, that has been very substantially discussed in the press, has it not?

Mr. GEARAN. Considerably, yes.

Mr. BEN-VENISTE. This is not some new revelation, that Mrs. Clinton was opposed to the appointment of a Special Counsel back in January 1994; is that right?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. Indeed, there has been great discussion in the media. I would call the Committee's attention to a lengthy review by Walter Pincus in *The Washington Post*, January 9, 1994, where he reviews the history of Special Prosecutors looking back over the last 15 years.

The points which were being discussed in the meeting that you have alluded to, back in January 1994, were general points regarding how an Independent Counsel or a Special Prosecutor has been triggered, the appointment of such has been triggered in the past, a historical review; and indeed some discussions about, some criticisms about how various Independent Counsels have operated.

Clearly one that comes to mind, which is mentioned in the Pincus article, is Independent Counsel Walsh who went on for 7 years and spent \$35 million. So in terms of being unchecked in terms of limitation and scope, is that the subject of what was being discussed rather than any specifics?

Mr. GEARAN. Without question. The entire tone of the week, as I recall, was responding which had been a considerable drumbeat in the press, both editorially and in Congressional calls for an Independent Counsel or a Special Counsel. The discussions that week were twofold: One is to work on putting together an affirmative strategy to get the story and the truth out about this matter. That required an awful lot of information to be brought together. But second, as my notes reflect, there was, as you allude to having been reported, considerable internal discussion on whether or not the President should call for a Special Counsel.

Those discussions were, as my notes reflect, ones that particularly Mr. Nussbaum and Mr. Klein wove in prior examples of past Independent Counsels or Special Counsels, and the experiences. And as has been reported in the press and as has been the subject of criticism for some time, that their duration is considerable, and their digression from their charges is considerable as well.

Mr. BEN-VENISTE. Here at page 568 of your notes—that's the Bates stamp number, there weren't 568 pages of notes—there is the discussion of various other historical instances of the appointment of a Special Counsel: The banking scandal in Iraqgate; Nick, I think you have Bowen, but it should be Bua, the judge who was appointed relating to INSLAW; Iraqgate; Walsh is mentioned in the Iran-Contra; the Donovan investigation, which resulted in a trial in which Mr. Donovan was acquitted; Cox and Jaworski, the

greatest of the Special Prosecutors; Bill Barr, using the Special Counsel quite cleverly; et cetera.

So there was a large discussion of the mechanics and the history. And indeed let me call your attention to a transcript of which I have the text, of Mrs. Clinton's—or a portion of her press conference of April 22, 1994, where she says in response to a question that asked in substance, you were reported to have opposed a Special Prosecutor. Well, by April 1994, there had been considerable discussion in the press about the fact that Mrs. Clinton had taken a position vis-à-vis the appointment after Special Prosecutor or an Independent Counsel or a Special Counsel; correct?

Mr. GEARAN. That's correct, yes.

Mr. BEN-VENISTE. The question was put directly to Mrs. Clinton:

Question: Back in 1994 in April, you were reported to have opposed a Special Prosecutor, at least in the beginning?

Answer: Now to your other question about the Special Counsel, I was not the only one of my husband's advisers who questioned the idea of a Special Counsel. I think those of us who were concerned about the precedent that would be set by having such an appointment made when none of the existing standards that had always been in place had been met, there was no credible allegation, you know, of all the things that are usually required. So I was questioning of that. But the President made the decision that we needed to get on with the business he came to Washington to do, and that was this, an important step to take, and I respected that decision.

So, in fact, Mr. Ickes' comment that Mrs. Clinton was unalterably opposed, et cetera, it turned out that that was an interim position. Indeed, it was a decision of the President to make, and the President made that decision, as we all know, and an Independent Counsel was appointed.

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. So all of this discussion in January leads to later press stories thereafter about Mrs. Clinton's personal opinion and that of Mr. Nussbaum and others. There is a press conference 2 years ago in which Mrs. Clinton acknowledges that her position was as such, that a decision was made by the President, and let's get on with it.

Mr. GEARAN. That's correct, that's how I recall it. There was this internal debate, and as I said, Mr. Nussbaum was particularly vocal in his comments about it as well.

Mr. BEN-VENISTE. Mr. Ickes, at page 569, remarked that this, "Discussion of counsel is the biggest [expletive deleted] waste of time." He knew at that point that something would ultimately have to be done about it?

Mr. GEARAN. He did not allude to that, but I think he understood that the most productive use of a meeting was to see where we could proceed from there, rather than rehashing the discussion of an Independent Counsel or Special Counsel.

Mr. BEN-VENISTE. Perhaps out of curiosity, I would just like to know, Mr. Gearan, why you felt it necessary to write down all the "bleeps" in this discussion?

Mr. GEARAN. Mr. Ben-Veniste, I was a reporter for a bit, and I tend to take notes down exactly what people have said. I try hard to record the conversations. A lot of what my responsibilities were at the White House would be to write down reporters' questions, as my documents show, and then to get the answers to those questions. It is a note-making style that I have, to try to do my best

to write down what was said. In this instance, it reflects the context of the meeting, perhaps, but that is the way I take notes.

Mr. BEN-VENISTE. In connection with the discussion of Beverly Bassett Schaffer, you were aware, or you were made aware, were you not, that Ms. Schaffer had—now turn your attention to 5773.

Mr. GEARAN. I'm sorry. The number again?

Mr. BEN-VENISTE. Page 5773, I'm sorry.

Mr. GEARAN. I don't think I have a 5773, sir.

Mr. BEN-VENISTE. Do you recall that there was a discussion of Ms. Schaffer at that meeting? I think it was January 6th.

Mr. GEARAN. I have 20574. Is that the Bates number you are referring to?

Mr. BEN-VENISTE. 20574, OK. I have a transliteration into type of yours and somebody has misnumbered it. Go back to 73.

Mr. GEARAN. OK.

Mr. BEN-VENISTE. There is a discussion there of Whitewater, and then on to 74, there is a discussion of Whitewater and Beverly Bassett. You were aware, were you not, that Ms. Bassett had been the Securities Commissioner in Arkansas during the time that Mrs. Clinton was at the Rose Law Firm and had represented the Madison Bank in connection with some matters of a regulatory nature; is that correct?

Mr. GEARAN. Yes.

Mr. BEN-VENISTE. The allegation that was being made during the campaign, and which again resurfaced in 1994, or was expected to resurface, was that Ms. Bassett had somehow done something improper, by reason of the fact that she had been appointed by Governor Clinton, in connection with the Rose Firm representation of Madison Bank; is that correct?

Mr. GEARAN. I am aware those were the stories, yes.

Mr. BEN-VENISTE. Those were the stories and you were tuned into that because that was your business, to be tuned into what the stories were?

Mr. GEARAN. Right.

Mr. BEN-VENISTE. So the discussion which occurs, could you tell us in your own words about what was being requested of Ms. Bassett Schaffer?

Mr. GEARAN. Well, I recall broadly this week and this meeting as well, as a period of time where the White House was going to begin an effort to have a more affirmative strategy on this matter so that we could have the particular information, the truth on this matter, put out. In order to do that, we wanted to make quite certain that the information we had was correct.

So, on one level we would not misstate what Ms. Bassett Schaffer had said previously, as well as the fact that we would have the information to make sure that whatever she had done was, in fact, the correct thing to do.

This was in a period of time where the White House credibility on an issue was paramount. The last thing we needed was to have a question of the White House misstating or misrepresenting any facts on this matter.

In the documents shown before me here presently, it says, "Get a lawyer to check law on issuance of preferred stock. Independent panel of regulators." This was consonant with that approach, to try

to get the truth out on this matter, to try to get the information out the best we could. And to do that, it would be helpful to make sure that we checked the law on the issuance of stock; getting to my second point, that the importance of assuring ourselves that if we said anything that in fact what Ms. Schaffer had done as a regulator was correct, and an independent panel of regulators to make sure our information was correct. That was the approach of that period of time.

Mr. BEN-VENISTE. All right. So on the one hand, you wanted to get a factual and legal analysis of what occurred back in Arkansas, in 1985 and 1986 in connection with this matter, and then there was the issue of Ms. Bassett herself.

Now were you aware, as Ms. Bassett has testified before this Committee, that during the campaign of 1992, she had, in fact, spoken out about the facts as they occurred relating to her consideration of Madison Savings & Loan's application for preferred stock. And after that, she was besieged by reporters, and felt that she had been harassed by them. That's what she testified to here. And that she was reluctant to get involved again and subject herself to the attention of the national media. Do you recall that?

Mr. GEARAN. I recall that this was an issue during the campaign. And that my understanding is, that she had said that there was no issue of preferred treatment for Madison Guaranty.

Mr. BEN-VENISTE. So is it correct to say that there was discussion about whether Ms. Bassett would be willing to come forward again and tell the truth as she knew it with respect to what had occurred back in Arkansas in 1985 and 1986?

Mr. GEARAN. There was certainly discussion that we needed to make quite certain that, if we represented her position, it would not be inaccurate.

Mr. BEN-VENISTE. Now was there any discussion in any way, shape or form, to try to send some emissary to mold Ms. Bassett's story, to change her story from the true recitation of the facts in any way?

Mr. GEARAN. No, sir.

Mr. CHERTOFF. This is very important, because this is now the speculation resulting from your notes, as you know, in the newspapers and so forth, that because there was this discussion at the time, that there was going to be some effort to try to influence Ms. Bassett's statement in some substantive way, as opposed to simply getting the story from her. You do understand the distinction?

Mr. GEARAN. I do.

Mr. BEN-VENISTE. Was there any effort that you heard of, either at these meetings or anywhere else, Mr. Gearan, that suggested that the White House was going to send someone to try to influence the substance of what Ms. Bassett was to say?

Mr. GEARAN. No.

Mr. BEN-VENISTE. Are you clear on that?

Mr. GEARAN. Yes, sir.

Mr. BEN-VENISTE. We have received a document marked S 20589, which is a memorandum from a Jake Siewert, regarding preferred stock. It is dated January 11, 1994. Do we have a copy to provide to Mr. Gearan? Do you have a copy of it?

Senator DODD. While you are doing that, let me ask, Mr. Gearan, were you aware of the fact that Ms. Schaffer had been quoted in numerous news articles about her involvement regarding Madison? There have been a number of stories. I am not sure whether the Administration was aware of this, a series of some 18 pages of 3 memos that Ms. Beverly Bassett Schaffer had given to The New York Times in February 1992; I don't know whether you were aware of those in 1994 or not?

Mr. GEARAN. I don't recall that, sir.

Senator DODD. Were you aware of the news stories and her public statements?

Mr. GEARAN. My understanding certainly was that she had said there was no issue of preferred treatment for Madison Guaranty. Senator DODD. She had publicly said that?

Mr. GEARAN. She had said that previously, correct.

Senator DODD. Mr. Chairman, the reason I raise that is because, I think, in terms of the issue of sort of a common sense approach, and I will listen very careful to your answers to Mr. Ben-Veniste as well, but the idea that someone who has already publicly gone on the record and made it quite clear in a public domain what their views were, the idea that you then get someone to reverse themselves, common sense would indicate that would be pretty unwise. Even if there were those who wanted to try and do it, it is a pretty dangerous tactic to take.

I think it may be worthwhile to point that out, that she was on a public record of having stated what her views were regarding that. So the idea you are going to then get her to reverse herself somehow publicly would be terribly short-sighted?

Mr. GEARAN. Right.

Mr. BEN-VENISTE. And indeed, you have acknowledged that you may not recall now that the matter was gone into in such substance by Ms. Bassett. One of the things she testified about was that she felt she had been misquoted by the Times in her recitation of these events, and she wrote lengthy letters to Mr. Gerth at the Times, bringing to his attention the facts as she recollected them. And those letters have been made a part of this record.

So there was, back in 1992, 2 years before this conversation had occurred, considerable discussion about Ms. Bassett's recollection in the public domain, that she had stated her recollection and in some detail, and that the conclusion was that no preferential treatment had been accorded.

Now as this matter resurfaces, 2 years later in 1994, we see that the White House is discussing how to get Ms. Bassett's story brought forward again, and to do the additional work of research regarding the issue. So if you look at the Siewert memo, you will see that there—did you see that at the time, was that circulated by Mr. Waldman?

Mr. GEARAN. I don't recall this, but—

Mr. BEN-VENISTE. It discussions the:

Authority to issue preferred stock, granted in 1979; Florida savings and loan, Federal Home Loan Bank Board approval for preferred stock, Mississippi experience, California experience; large banks began issuing preferred stock in 1982; use of preferred stock not confined to the business papers. Federal regulators acknowledged that the issuance of preferred stock was common in 1984. By 1984 the use of preferred stock by thrifts was widely discussed in the banking and legal press. Federal

regulators expressly authorized the issuance of preferred stock by finance subsidiaries in 1984.

So, all of this was resultant from the discussion on January 4th; is that correct?

Mr. GEARAN. It was certainly—I don't know that it was specifically the 4th, Mr. Ben-Veniste, but it was certainly that period of time, the effort within the White House was to make sure we would have the accurate information, that if we were going to undertake this effort, that we should not misstate any part of the information.

Mr. BEN-VENISTE. My last question is that—the heading description of this memorandum was that several media accounts have portrayed the 1985 plan to have Madison Guaranty issue preferred stock as somehow novel or unique. And this was a description of—and I have only read the topic headings—of all the literature to show that it was extremely common at the time that Madison Guaranty considered it; is that correct?

Mr. GEARAN. That's my reading of this, yes.

Mr. BEN-VENISTE. Mr. Chairman.

The CHAIRMAN. Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. Gearan, thank you for coming before the Committee. I certainly appreciate the important work you are doing at the Peace Corps.

Mr. GEARAN. Thank you, Senator.

Senator HATCH. I want to compliment you for it.

I would like to ask you some questions about the notes you took in your previous job as Deputy, or as Director of Communications at the White House. And I want to personally commend you for promptly turning these notes over to the Committee.

Mr. GEARAN. Thank you.

Senator HATCH. We appreciated that, because a number of people on the Committee really have become increasingly frustrated with what they consider to be obfuscation, delays, and other approaches that really have slowed down the investigation.

I would like you to explain some of the notes that you took from January 4th through the 9th, 1994. During last week's hearings, I touched upon whether your notes indicated that efforts were made to influence Beverly Bassett Schaffers' story. I now want to ask you about your discussions concerning the appointment of an Independent Counsel. This is an area that, naturally, I have some interest in as Chairman of the Judiciary Committee.

In your notes from January 5th, and that would be found on page 20569, you record that the President and First Lady were adamantly opposed to an Independent Counsel—I'm sorry, I will wait until you finish—did you find it?

Mr. GEARAN. 569?

Senator HATCH. That's what I have, 20569.

Mr. GEARAN. Yes, OK.

Senator HATCH. You record that the President and First Lady were very much opposed—

Mr. GEARAN. That's right.

Senator HATCH. —to an Independent Counsel being appointed to investigate Whitewater. Mack McLarty, the President's Chief of Staff, says in those notes that "HRC"—that's Hillary Rodham Clinton—"and BC"—I guess that's Bill Clinton—"don't want it." That's correct?

Mr. GEARAN. That's correct, sir.

Senator HATCH. And Harold Ickes chimed in that, "Discussion of counsel is the biggest," I guess, "F---ing waste of time," since they don't want it. That's correct?

Mr. GEARAN. That's correct.

Senator HATCH. During the January 7th meeting again, at page 20576, He says that a major problem with the Independent Counsel is that—do you have it—"HRC," Hillary Rodham Clinton, "adamantly opposed." That's correct as well?

Mr. GEARAN. Uh-huh.

Senator HATCH. The Independent Counsel has not been, to me, "the biggest F---ing waste of time." As you're no doubt aware, the Independent Counsel's investigation has lead to Grand Jury indictments on at least 21 counts against Jim McDougal and even the Sitting Governor of Arkansas, Jim Guy Tucker, and has led to the conviction of the number three official at the Justice Department, Webb Hubbell.

Indeed, for the first time in history, the First Lady has been called to testify before a Federal Grand Jury. And the investigation could lead, and may very well lead, to even more charges against others, and of course, there are others against whom indictments have been raised.

Now the participants in these meetings—that you have in your notes, and the President and Mrs. Clinton were opposed to the Independent Counsel because they felt that they had done nothing wrong and that the Counsel was unnecessary; is that right?

Mr. GEARAN. Yes, sir. If I might, I don't believe Mr. Ickes' comments was that it is a waste of time. I believe I would read my notes that it's a waste of time at this meeting to prolong a discussion about it.

Senator HATCH. You thought that's what he meant by that?

Mr. GEARAN. That's how I would read it, sir, yeah.

Senator HATCH. That's the way you would read it, but what is your recollection?

Mr. GEARAN. I don't recall him—

Senator HATCH. Could it have been the other meaning, though?

Mr. GEARAN. I'm sorry?

Senator HATCH. Do you recall exactly what he meant in your opinion, or could it have been the way it appears to me?

Mr. GEARAN. Senator, I guess from the rest of the notes, where he outlined what we should be concentrating on, it was typical certainly for Mr. Ickes to move a meeting along.

Senator HATCH. But in essence you don't know if that's what he meant by it or not, you just presume that it was?

Mr. GEARAN. That's how I would read my notes.

Senator HATCH. You read it that way but you don't recall?

Mr. GEARAN. That's correct.

Senator HATCH. I think it could be read the other way too. And you agree with that?

Mr. GEARAN. I agree that's how I would read my notes.

Senator HATCH. But it could be read the other way?

Senator DODD. If you look at—what page are we on here, on 69?

Senator HATCH. No, this is—

Senator DODD. At the bottom, what you have underlined, "Discussion of counsel."

Senator HATCH. Let me withdraw that question. Let's move on. That's fine with me. I will take your feelings about it. But I also see, in your notes, that several White House officials argued that an Independent Counsel should not be sought; is that correct?

Mr. GEARAN. That's correct.

Senator HATCH. I presume after the Independent Counsel bill would be reauthorized, because the Independent Counsel could not be, as the notes say "controlled"; is that right?

Mr. GEARAN. I'm sorry, Senator. Could you repeat the question?

Senator HATCH. I presume that when they said that an Independent Counsel should not be sought, that the bill had expired so if an Independent Counsel would be reauthorized, one of the things they were concerned about is that the Independent Counsel could not be "controlled"?

Mr. GEARAN. No, I think my notes use Independent Counsel and Special Counsel interchangeably.

Senator HATCH. I am referring to 20567. For example, in the January 5th meeting at page 20567, Bernie Nussbaum says that an Independent Counsel is "subject to no control"—

Mr. GEARAN. Yes.

Senator HATCH. —right?

Mr. GEARAN. That's what my notes says.

Senator HATCH. During the January 7th meeting, 20575, your notes say, "We cannot affect the scope of the prosecutor." Right?

Mr. GEARAN. Correct.

Senator HATCH. Now to me, a fair reading of these statements is that people in these meetings wanted to prevent the appointment of an Independent Counsel because they wanted to exercise control over his or her investigation. Wouldn't you say that's a reasonable conclusion?

Mr. GEARAN. No, Senator.

Senator HATCH. You don't?

Mr. GEARAN. I don't.

Senator HATCH. What do you think they meant by those things?

Mr. GEARAN. I think, as I've tried to testify, this was an issue of—a question of, and Mr. Nussbaum particularly outlines a history of other Special Counsels or Independent Counsels that could stray beyond in length in time from their original scope and charge, that's, I think, the tenor of my notes and certainly my best recollection for you.

Senator HATCH. I will accept that. During your January 4th meeting when you discussed the appointment of the Independent Counsel, your notes at page 20566 indicate that the First Lady enters and says, "Looks like a meeting I might be interested in." Is that right?

Mr. GEARAN. That's correct.

Senator HATCH. Did the First Lady, at that time or at any other time, express concerns during the meeting that an Independent

Counsel should not be appointed because of her concerns that a Counsel might not be controlled or might not——

Mr. GEARAN. No.

Senator HATCH. —be somebody acceptable?

Mr. GEARAN. No, sir.

Senator HATCH. Did anyone in any of these meetings discuss an attempt to control Justice Department investigations?

Mr. GEARAN. No. No, Senator. In fact, I think some of my notes reflect the independence of the Attorney General. I think people at the meeting understood that our Attorney General is fiercely independent.

Senator HATCH. If they didn't what do your January 8th notes mean at page 20579, where Mr. Ickes says, "Kendall attempted to talk to Alan Carver who was supervising Donald Mackay's investigation into Whitewater at the time." Mr. Ickes calls Mr. Carver a "bad guy," who wouldn't talk to Mr. Kendall without some FBI agents present; is that correct?

Mr. GEARAN. My notes reflect that, yes.

Senator HATCH. They reflect that, OK. Then Mr. Ickes says, "Those guys are," I take it, "F---ing us blue." Is that correct?

Mr. GEARAN. That's what my notes indicate.

Senator HATCH. And what do you understand Mr. Ickes to have meant by that?

Mr. GEARAN. I would read this, Senator, as a follow-up to the initial entry from that meeting, where Mr. Nussbaum argues against a Special Prosecutor. And I think Harold's observation here is that Alan Carver, who apparently is at the Department of Justice, is a tough guy and that they were not particularly treating the matter with kid gloves.

Senator HATCH. And you think that's all he meant by that?

Mr. GEARAN. I think, read in the context of another discussion of a Special Prosecutor, Bernie's argument against it, that that's how I can read my notes.

Senator HATCH. Mr. Ickes was very concerned, he didn't want a Special Counsel?

Mr. GEARAN. I don't recall Mr. Ickes' view more than just moving the process along to make sure that we had the material, and the information and the Q&A's and the chronology together.

Senator HATCH. I guess what I am asking is how could Mr. Carver and Mr. Mackay be problems if Mr. Carver was only doing his job to carefully investigate Whitewater. Wouldn't a fair reading of your notes seem to suggest that there was an attempt to influence his investigation, that he spurned, that Carver spurned?

Mr. GEARAN. I am not sure what—I am not sure of your point, Senator.

Senator HATCH. Well, as I read the notes, they were concerned about Carver, who was "a bad guy," who wouldn't talk to Mr. Kendall without some FBI agents present. Mr. Ickes says, "That guy is F---ing us blue." It seems to me a fair reading would suggest that there might have been an attempt to influence the investigation and Carver spurned it?

Mr. GEARAN. I am not aware of anything to that effect, Senator. I think it makes sense when read in context with the previous argument that Mr. Nussbaum was making all of that week and that

Harold's response was somewhat similar to, it is not as if the Justice Department investigation that was ongoing was treating us easy by it.

Senator HATCH. Is it your testimony, for the record, that there was no attempt to influence Alan Carver or Donald Mackay in this matter?

Mr. GEARAN. Yes, sir.

Senator HATCH. What would anyone hope to gain by controlling the investigation into Whitewater? The President and First Lady had promised to be fully open with the Committee, with the Special Prosecutor, with the American people on Whitewater. If that's the case, then it seems to me the only interest should be in getting out all the facts and not controlling the investigation. But you are saying that that wasn't what went on?

Mr. GEARAN. No, no, Senator. I am not aware of any effort to control the investigation. I think what I am trying to testify to this Committee is during this period the Clintons had submitted their files to the Department of Justice at the end of December, and that they felt that was complying as best they could with the investigation. There was no effort, and I don't believe my notes reflect an effort, to try to control anyone at the Department, and recognizing that we had a very fiercely independent Attorney General.

Senator HATCH. Some think a fair reading of your notes on January 7th, at page 20376, where David Gergen says, "Once a Special Prosecutor is appointed, Reno is boxed in" could mean that it would be hard for Attorney General Reno to interfere; is that a fair reading, or again—

Mr. GEARAN. Senator, I think this was all in the context of the fact, as I've tried to testify, that frequent Independent Counsels' histories replete with the Counsel's own criticism, that it goes beyond its anticipated duration, and it takes on a life of its own. I think that's the point of Mr. Gergen's comments here, I think, that the Attorney General would be boxed, is that the matter is out of her hands at that point.

Senator HATCH. I have just a few more but I am afraid that I have gone over—

The CHAIRMAN. Well, in the interest of continuity, Senator, Senator Sarbanes has agreed to let you continue and I thank him. We will save time.

Senator HATCH. Let me see if I can move it along. At another point in your notes, on January 5th, this is 20567, there is a discussion of Independent Counsels and the people were complaining in these notes, as I view them, that some Independent Counsels can be good, and some in their words can be bad. Is that a fair statement?

Mr. GEARAN. Well, I think it is sort of a cliché or slang approach to the two kinds of—the two generic—

Senator HATCH. Yes, it goes without saying really. Bernie Nussbaum says that a "bad" Independent Counsel, one appointed from the "outside," in these notes, and "decides a smell of corruption and can show some things of those people close around the principal," but then he goes on to say that there can be "good" Independent Counsels who undertake a 3- to 4-year investigation, and then "will have written 400-page report." That's what your notes say; right?

Mr. GEARAN. Yes, sir.

Senator HATCH. Did anyone discuss influencing Attorney General Reno concerning who she should choose as an Independent Counsel in this matter?

Mr. GEARAN. No.

Senator HATCH. Nobody, to your knowledge?

Mr. GEARAN. No, sir.

Senator HATCH. To your knowledge, did anyone attempt to influence Attorney General Reno to choose, in Bernie Nussbaum's words, a "good" Independent Counsel, not a bad one?

Mr. GEARAN. No, sir.

Senator HATCH. On the day before January 7th at page 20576 now, you will recall that Mr. Ickes says that there are major problems with the Special Counsel. The first was that "HRC," Hillary Rodham Clinton, "adamantly opposed." That's correct?

Mr. GEARAN. That's correct.

Senator HATCH. The second was that "Reno has shut the door." What does that mean?

Mr. GEARAN. I would read that to mean that the Attorney General would make up her own mind about the Independent Counsel.

Senator HATCH. Well, the way I would read it, and I think a fair reading, is the phrase suggests that someone went to Attorney General Reno and that she rejected any attempt to influence her. That's the way I would read it and I think most others would read it as well.

Mr. GEARAN. I am not aware of that, Senator.

Senator HATCH. I would expect nothing less from her because she is a very fine person, but that's the way I would read that.

Mr. GEARAN. I am not aware of that, Senator.

Senator HATCH. You are not aware of anybody going to her and asking for special treatment, or for a good counsel versus a bad counsel?

Mr. GEARAN. That's right.

Senator HATCH. I think the reason that we get a little upset about it here is because if you go back to Roger Altman's diary, it reads, "Maggie's strong inference"—I can't get those next two words but it's "that the White House was trying to negotiate the scope"—what are these two words—"inference was that the White House was trying to negotiate the scope of an Independent Counsel with Reno and having enormous difficulty."

See, that's what causes us a great deal of angst here, and when we see this kind of language in your notes, it is consistent with that. You can see why I have taken the interpretation I have.

Mr. GEARAN. Senator, this is the first time I have seen this. I am not aware of that, as I've testified.

Senator HATCH. Is it just a coincidence then, less than 2 weeks after you had this discussion where you took these notes, Attorney General Reno went ahead and chose what some think was a "good" Independent Counsel, Robert Fiske, who many have criticized as failing to investigate fully the events surrounding Whitewater?

This is what's bothering a lot of people and these notes lend a lot of credibility that there was an attempt to manipulate this process, and to get somebody who was easier rather than somebody who would do the job.

Now during the time that your meetings took place, Attorney General Reno was considering whether to appoint a Special Prosecutor to investigate Whitewater. At this time the Independent Counsel statute had lapsed, as I recall, and the Attorney General chose Robert Fiske on January 20th, to be her Special Prosecutor. Unlike the Independent Counsel, the Special Prosecutor was under the control of the Justice Department and therefore ultimately the President—

The CHAIRMAN. Senator, I am going to ask you, because—

Senator HATCH. I have two paragraphs to go. Let me make these points and I will quit.

As Chairman of the Judiciary Committee, I am gravely concerned at any discussion by White House officials to influence the workings of the Justice Department, particularly when it conducts ongoing criminal investigations into the White House itself. And I don't need to remind anyone of what happened with Watergate when President Nixon attempted to interfere with the investigation of the Special Prosecutor there.

Last time when I questioned Ms. Sherburne and Mr. Kendall about these notes, I was very concerned that the White House officials appeared to be attempting to influence the story of an important witness, Beverly Bassett Schaffer, in this investigation. And Ms. Sherburne agreed that the notes could be read that way.

The possibility that the White House officials might attempt to influence or tamper with an ongoing investigation into their actions, or into the actions of the President and his aides, does raise questions about the integrity and fairness of the Administration of justice in our Nation. And so I intend to pursue these questions until we get good answers to them.

Now, I understand you have been very forthright here today, and I appreciate it, and I appreciate the work you are doing at the Peace Corps, but I think these questions have to be asked and I think there have to be answers to them.

Mr. GEARAN. If I might, Senator, the only text I can provide to you for that period of time in terms of your last point about Ms. Schaffer is our effort at that period of time was to have a new affirmative effort within the White House to try to get the truth and the facts out in this way. That's what these meetings evidence, putting together the Q&A's, putting together chronology to try to state the facts, and the background, and the history of this Whitewater matter.

In order to do that, there needed to be information brought together, and that accounts for my notes which talk about attorneys looking at it or an independent panel of regulators to try to get those facts amassed. Those are the meetings that I participated in, Senator. It was an effort as Communications Director to make sure, when we were representing any fact on behalf of the White House, that it not be an error. And this was the week immediately after a period of time when we had to clarify when the documents went over to the Department of Justice, so we—there were press stories at the time about White House credibility and White House handling of this matter. That's the context of the meeting. That's certainly my recollection of the meetings that Mr. Ickes held.

The CHAIRMAN. I want to thank my colleagues, and because the Senator did want to complete his thought we have gone over 10 minutes, we will add that to your time in fairness.

I want to make an observation, and if you would put up the last set of notes concerning Maggie Williams' comment. Let's see the date. It is January 6, exactly while this is going on—and we will come back to this note—but this is what I believe the Senator was driving at and I wasn't aware of this. I have seen this note before, but it becomes quite apparent that when they say that Janet Reno has shut the door, when you look at this in connection with other events, your notes reveal that the White House was attempting to negotiate the scope with the Attorney General.

Your notes of the same day, or day after, say she shut the door. I mean, let's not fool ourselves. This wasn't press—people were attempting to negotiate the scope with the Attorney General. Now, you may or may not be aware of who those people were, but it is pretty obvious that was the context. Any other interpretation, I believe is strained. So I share that with you.

Senator Sarbanes.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman. Thank you, Mark.

Let me also join with Senator Hatch in commending you for the work you are doing at the Peace Corps, but also joining Senator Hatch in commending you for the promptness in which these documents were turned over when discovered. Others have made other suggestions, and I think it is to Senator Hatch's credit that he recognizes that this ought not to be an issue, how you found these documents and what you thought had happened with them and how they ended up here, and I agree with him on that.

First, let me respond to my friend and colleague from New York. As I recall it, first of all, the appointment of Mr. Fiske was highly commended by everyone. At the time of his appointment, it was recognized, and in fact, I think my friend from New York was one of those who also suggested this was a first-rate appointment, had all the credentials in the world to do a great job. It was widely reported that Mr. Fiske wrote his own charter when it came down to the scope. So while it may be intriguing to look at people's own desires and so forth, and what they'd like to have happen, the bottom line is that Mr. Fiske wrote his own charter. What is the date of these notes? Is this the 5th of January?

Mr. GEARAN. I'm sorry?

Senator DODD. The date of your notes—

Mr. GEARAN. It's throughout the year.

Senator DODD. It's a series of dates, isn't it?

Mr. GEARAN. Yes, Senator Dodd. Beginning with the first note I have, Senator, is the 4th of January.

Senator DODD. And it goes through until when?

Mr. GEARAN. I believe the 8th of January.

Senator DODD. Do you recall when, in fact, President Clinton called for the appointment of an Independent Counsel?

Mr. GEARAN. I believe it was the next week, it was during the foreign trip that the President was on, as I recall.

Senator DODD. If I said the 12th of January——

Mr. GEARAN. That would make sense.

Senator DODD. On the 12th of January, President Clinton calls for the appointment of an Independent Counsel. Do you recall when the Independent Counsel was appointed?

Mr. GEARAN. I do not.

Senator DODD. Well, if I said the 20th of January, does that seem about right?

Mr. GEARAN. That was what was referenced this morning.

Senator DODD. The reason I make that point, while we can go back and examine all these notes and so forth, the fact of the matter is that within a week of these notes being taken, President Clinton called for the appointment of an Independent Counsel. Within roughly a week after that, in fact, Mr. Fiske was appointed.

Now again that may not seem like much to anybody else but it seems like you have to find out exactly what happened after these notes were taken. It is not as if we don't know what happened. We know what happened. If other things occurred, the notes and things, people want to read into it. If you know what happens, the President names or calls for an Independent Counsel, going back and reviewing these notes, the context of that seems to me cannot be neglected or avoided. So I think it is very, very important to make that point.

Second, you know, I find if it weren't so significant and important, it would be almost amusing that anybody on this side of the table would find it mystifying that someone in public life would be antsy about the appointment of an Independent Counsel. People sitting around saying what does this mean, or heaven forbid, someone might be opposed. The idea in public life of an Independent Counsel, I find hard to believe someone sitting at this table looking over the last 20 years of his life might be antsy about that.

That may come as a shock to some of my colleagues, but by and large, I find people in public life are not enthusiastic about a public Independent Counsel being named, looking into 20 years. So common sense would dictate what you reflected, at least to this Senator, is people sitting around you get a lot of press inquiries, you got a lot angst. Again, I don't find that terribly novel in a Washington context.

Let me go back, if I can, because the question of the independence is an important point and the suggestion has been made about the ability to influence. I would like to turn your attention to page 20570. As I read this——

Senator SARBANES. Would the Senator yield for a moment?

Senator DODD. I would be glad to yield.

Senator SARBANES. On the Independent Counsel issue, it was a subject of considerable controversy in the Congress, whether the Independent Counsel law ought to be extended when it expired. Indeed, many of my Republican colleagues opposed extending the Independent Counsel law. In the end, it was extended and we are now proceeding under it. But the notion that there weren't legitimate points being raised about the extension or nonextension of the Independent Counsel doesn't square with the record.

Senator DODD. I thank my colleague for reminding us of that and, in fact, I know today that there are people in Congress, on

both sides of the aisle, who have some serious reservations about Independent Counsels.

I will come back to the point about the Attorney General. I was intrigued in your notes about the good-hearted and bad-hearted. We see what happens. You become a self-fulfilling prophecy about what happens when these operations are established. The complaints, in my view, about Mr. Walsh and how long that went on, I think, were legitimate, frankly. As a Democrat I will tell you that. I opposed, as I pointed out in this Committee before, the establishment of an Independent Counsel to look into the October Surprise. In 1992, the allegation that President George Bush had been flying to Europe to meet with people on the Iran-Contra was ridiculous, in my view.

So I know I am not alone in my reservations about what Independent Counsels can do and what your notes seem to reflect is what is common discussion, maybe not in too many public circles, but I can tell you an awful lot of people here feel that this needs to be re-examined, how Independent Counsel's function because of the very observations you make in these notes. Maybe others won't say so but I will. I know there are colleagues on this Committee who feel this way about it. So to suggest that somehow the White House was acting in a way or talking about this and something that anyone will find strange on this side of the table I don't think really is credible.

Let me go to the bottom of page 20570 and as I read that line, we have that up—it's hard to read, "Republican appointee is running investigation." That's Mr. Mackay?

Mr. GEARAN. Right.

Senator DODD. Second line, GT or Grand Jury—"GJ is——?"

Mr. GEARAN. It says, "Citizens available to look at evidence."

Senator DODD. The next line?

Mr. GEARAN. Says, "And an independent Attorney General."

Senator DODD. What is the point? What are you saying here with that paragraph?

Mr. GEARAN. I guess I would read this, Senator Dodd, as Mr. Ickes saying at the, four lines up, get the argument on why not a Special Counsel. One, there is no evidence of wrongful acts, you can't appoint someone every time there is a charge. Two, there has to be a basis for this. Three, we have a Republican appointee who was running the investigation and you have Grand Jury available. When I look at this and then review the talking points that were shared with me at my deposition on Monday night, Senator, they track, frankly, the talking points of the argument that was being made within the White House on why there should not be a Special Counsel.

Senator DODD. That, in fact, with a, "Republican appointee is"—what is that word? Pursuing?

Mr. GEARAN. Running.

Senator DODD. —"running investigation," that the independence of a Grand Jury. And what you are identifying here "and an Independent Attorney General," in effect, reflecting the observation about the Attorney General.

Mr. GEARAN. The whole point is that if the question is reflecting the independence, that Mr. Mackay was a well-known and re-

spected Republican, as the next page reflects, as well as the fact that there is a Grand Jury available to look at the evidence and the fact that we have an independent Attorney General.

Senator DODD. That was enough in a sense to ensure the, kind of, independence of the investigation?

Mr. GEARAN. That is how I read that as an argument posed by Mr. Ickes.

Senator DODD. Second, let me go back to the issue, and the pages on this, on Mr. Ickes, and I find that some people just get overly fascinated with the colorful language in your memo. I am not interested in that so much as I am on the point that was raised by Senator Hatch over whether or not on the appointment of the Independent Counsel, the reaction of Mrs. Clinton and the reaction of Mr. Ickes.

Let me ask the question Senator Hatch asked you. Is there any doubt in your mind about what Mr. Ickes was intending by his points of there was no point in pursuing the discussion, that in fact it reneged. Now it left it unclear in my mind when Senator Hatch raised the question that maybe this is open to some different interpretation in your mind. If there is, you ought to make that clear, if it is not, you ought to make that clear as well.

Mr. GEARAN. Thank you. I thought how I left it with Senator Hatch is that is not how I would read my notes. There is not a doubt in my mind about this, that is, certainly when you look at the context of the notes, it was certainly Harold's style to move the meeting along, to say it is a waste of time and to go through the items that he thought this meeting should be concentrating on seemed logical to me.

Senator DODD. It is a waste of time because the view at that juncture of the President and Mrs. Clinton was they were opposed to an Independent Counsel?

Mr. GEARAN. That's correct. We should move on to determine if the White House effort at this period of time was to put together this affirmative strategy, to getting the truth out on Whitewater, then we should move on to concentrating our best efforts to putting together the Q&A's, putting together the chronology, putting together the types of things that would help facilitate that.

Senator DODD. Again, to make the point, I will turn it back over to Mr. Ben-Veniste but what is the date of that discussion where the reference is made to the Clintons' opposition to the appointment of an Independent Counsel?

Mr. GEARAN. January 5th.

Senator DODD. January 5th?

Mr. GEARAN. If I am reading from the same memo you are referring to.

Senator DODD. To make the point again, a week later on the 12th, the President, in fact, calls for the appointment of an Independent Counsel. So, obviously whatever happens between the 5th and 12th, they changed their mind?

Mr. GEARAN. Right.

Senator DODD. Thank you.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. To go back to the discussion of the "good" Independent Counsel versus the "bad" Independent Counsel, my

sense of what you have said and what is contained in your notes is that even if someone is good in the sense of faithful to his or her task in getting the evidence, analyzing the evidence and making a decision straight down the line on that evidence, there still is, after all that process, a great deal of pressure on that individual who is the Independent Counsel to come up with something at the end of the day.

Mr. GEARAN. That is certainly the flavor of what Mr. Nussbaum was saying. At the bottom of 567, he says someone who was "appointed for 6 to 9 months, wrote report, didn't expand and went home." I think his point was, as I have said, the length and expense and—

Mr. BEN-VENISTE. It takes an extraordinary person with a great deal of self-confidence and professional integrity to conclude at the end of the day that, indeed, there is nothing there and not come forward with some indictment as we have seen recently, one multicount indictment that was reduced to a misdemeanor and so forth. A difficult decisionmaking job, even with the best of intentions, to come back and say, yes, I have looked, there isn't anything there. And that has happened. It has happened, but it seems to be a balance between the law that is on the books and the individual who gets the position.

Mr. GEARAN. That's right. I think the point generally is that it would be difficult for someone to go back. I think he used the case in New York. He would be afraid that he would have conducted this investigation and come up with nothing.

Mr. BEN-VENISTE. Again, when the use of Ms. Wright is made as an example; explain how that came about.

Mr. GEARAN. Mr. Ben-Veniste, I would like to be quite clear about it, that in fairness, as I said to Ms. Wright particularly, this was an extreme example of what could be a really unwarranted prosecution, I think was the point that Mr. Nussbaum was making. At no time, did he suggest that there was any evidence or any factual basis for her to be charged with anything. This was consonant with his general argument about an Independent Counsel or Special Counsel.

Mr. BEN-VENISTE. Now with respect to the points that were made about Mr. Mackay. Mr. Mackay was a Republican appointee and a career Department of Justice employee in the Criminal Division; is that what was discussed at that time?

Mr. GEARAN. I think, as my notes reflect, is that he had served in the Nixon and Ford Administration as a U.S. Attorney in the Southern District in Illinois and then to the Department of Tax in Illinois and he had been a career prosecutor.

Mr. BEN-VENISTE. So the point was that an individual line prosecutor for the Justice Department who was a career individual who had been appointed by a Republican President and had served in Republican Administrations would have the credibility to conduct a fair and impartial investigation without implicating all of the surrounding ambiance or baggage that the appointment of an Independent or Special Prosecutor would involve; is that correct?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. Then the discussion about the career people at the Department of Justice and what the White House had experi-

enced up to that point in dealing with them was that the people at the Department of Justice, the career individuals such as Mr. Carver were not giving any favored treatment to the White House.

Mr. GEARAN. That's how I would read that, there was no—

Mr. BEN-VENISTE. The idea of "bleeping" us blue," in colorful language, meant to convey that they weren't getting any kind of special treatment out of these career people at the Department of Justice.

Mr. GEARAN. I think it is a colorful way to express that independence of the Department, yes.

Mr. BEN-VENISTE. Let me share for the benefit of Senator Hatch and others, since we have had the testimony of the career individuals about this, so that there is no misunderstanding of their perspective of what was going on, from Mr. Alan Carver's testimony of October 17, 1995. At line 17, he said: "I don't think it got to a disagreement. Again, I think what it got to was some discussion to the effect that we want interviews, and it is important to have them and we want to get them scheduled and get them done. And we want them under conditions which will be credible and that will be in accord with the usual way the FBI does interviews."

"And in dealing with people who are not totally accustomed to that environment," which I take it was people at the White House, who were the subject of these interviews at this point, "as you do when you are dealing with people all the time in investigations and trying to work that out, so it was that sort of thing. I don't see it, in my mind, as a contest or an antagonistic situation. But I think there was apparently a sense that it should be done a little differently than the way we wanted to do it," meaning Department of Justice career investigators, "and we wanted to do it professionally and in accordance with the standard operating procedure of the FBI. It was as simple as that and we weren't going to do it any other way."

Then Mr. McDowell testified at page 137.

"Question: As the result of those interviews," meaning the ones which had taken place just before your meeting in January, "did it appear to you that anyone at the White House had acted unlawfully?"

"Answer: No. Although, frankly, I haven't—if I have ever seen the interviews, I have forgotten them but it was not an issue as we were turning the case over to Fiske. We didn't think we had any evidence of any unlawful behavior."

"Question: And did you uncover, putting aside unlawful behavior, any evidence of improper motive?"

"Answer: I don't recall any, no."

Finally, with respect to Mr. Mackay, at page 44 of his testimony. "The only thing I remember about that was Mr. Carver basically complaining, I guess, to Mr. McDowell that the bureau was dragging its feet," meaning the FBI, "in conducting all the interviews, not just Mr. Nussbaum. I sort of have a faint recollection of maybe later on Mr. Carver complaining to Mr. McDowell in my presence that the FBI was holding back on the Nussbaum interview."

So these discussions were going on and Mr. Carver, who was the person who was being complained about, said in his testimony before this Committee under oath that he was going to stick to the

regular procedures and wasn't going to deviate from them, that the White House people might not have liked that, but that is what he was going to do.

So, that, in essence, all falls within the composite picture of Mr. Mackay as a credible person, as an experienced person who could conduct this investigation with credibility under the aegis of the Department of Justice and that from the standpoint of technical analysis, putting aside political analysis, which eventually ruled the day, that the appointment of Independent Counsel was not necessary in this circumstance. Is that what this discussion essentially was about?

Mr. GEARAN. Mr. Ben-Veniste, that is the first time I have obviously heard that testimony. Certainly I'm not aware of it. As I have testified here, Mr. Ickes' comments on Mr. Carver in the context of those notes, as it illustrates again Mr. Nussbaum's argument against a Special Prosecutor is such that there was clear independence by the career folks at Justice, and that was quite clear in his language.

Mr. BEN-VENISTE. Mr. Ickes was saying so in direct and colorful language?

Mr. GEARAN. Apparently, yes.

The CHAIRMAN. Before I recognize Senator Grams, I have to tell you, I noticed that there is a propensity for you to have almost a detailed recollection when it is something that is exculpatory or that would minimize a reasonable interpretation of your notes. How anyone can interpret your notes of January 8th—let's put it up on the Elmo. Whitewater, January 8, Ward Room.

Mr. GEARAN. What is the number, Senator?

The CHAIRMAN. That's your last page of notes, "Whitewater, January 8th." See it?

Mr. GEARAN. Yes.

The CHAIRMAN. On or about what time did that meeting start? Where was the Ward Room?

Mr. GEARAN. The Ward Room is in the West Wing of the White House.

The CHAIRMAN. Why were you there?

Mr. GEARAN. I recall during this week a series of meetings, as I have said, where the White House was trying to put together efforts to speak more publicly through op eds and appearances on television shows and related matters and in more detail—

The CHAIRMAN. At the same time the White House was attempting to prevent the release of various records from the public, as you testified; isn't that true?

Mr. GEARAN. I'm not sure—

The CHAIRMAN. Didn't you say that they wanted the documents subpoenaed by the Department of Justice so that they wouldn't be made public?

Mr. GEARAN. I hope I testified that my understanding was that the request for the subpoena was to protect the confidentiality of those—

The CHAIRMAN. Yes, from the public, so that they would not be made public; is that correct?

Mr. GEARAN. Senator—

The CHAIRMAN. We will go over that, because we have other indications. This isn't an isolated meeting. People are working, assembling. It ties together. What is the next line in your notes?

Mr. GEARAN. "BN," which I would read as Bernie Nussbaum, "argument against Special Prosecutor."

The CHAIRMAN. Let's go down to the next one.

Mr. GEARAN. "HI," Harold Ickes. "Alan Carver at Department of Justice—bad guy."

The CHAIRMAN. He says he is what? Read it.

Mr. GEARAN. My notes say, "bad guy."

The CHAIRMAN. What does that mean?

Mr. GEARAN. I think it means tough guy.

The CHAIRMAN. A tough guy is now a bad guy or a bad guy is now a tough guy? It doesn't say he is tough. It says he is a bad guy. Why is he a bad guy? You had a discussion about this. You don't remember that?

Mr. GEARAN. Senator, my notes reflect as it goes on to say, "When Kendall called, when he called on speakerphone were two FBI agents and Jim Nixon."

The CHAIRMAN. Go ahead.

Mr. GEARAN. "These guys are [expletive deleted] us blue."

The CHAIRMAN. This wasn't usual. The Justice Department was viewed, if you take Mr. Ickes' views, as bad guys?

Mr. GEARAN. I would take it to mean they are being tough and independent.

The CHAIRMAN. Independent? Is it bad if they are independent?

Mr. GEARAN. No, but when read in the context of—

The CHAIRMAN. You are a great notetaker. We asked before why you took these notes and even included some of this colorful language, and you said because that is my training. He didn't say "independent." If he said "independent" you would have put it down; isn't that true?

Mr. GEARAN. I may have, but—

The CHAIRMAN. Now wait a minute. You are not telling me that you put "bad" down when he really said "independent"?

Mr. GEARAN. No, sir.

The CHAIRMAN. You are not suggesting to me when he says these guys are giving it to us blue that that had anything to do with independent; is that true?

Mr. GEARAN. Senator, what I am trying to do is to help this Committee—

The CHAIRMAN. I am asking you to be responsive to my questions. Nothing there suggests they are independent. You suggested they are not happy with the Justice Department. Isn't that true? Yes or no?

Mr. GEARAN. Senator, I think Mr. Ickes, this is probably best a question for Mr. Ickes—

The CHAIRMAN. I am not asking you to characterize your feeling. I am asking you to reflect about what people said and what took place at that meeting.

Mr. GEARAN. My reflection of that meeting—

The CHAIRMAN. You are going to say that he really meant that they were independent. That's your characterization. Read it again and then tell me your conclusion.

Mr. GEARAN. "Bernie Nussbaum argument against Special Prosecutor Harold Ickes, Alan Carver at Department of Justice—bad guy. When Kendall called"—

The CHAIRMAN. Slow down. What did he say he was at Department of Justice, Carver?

Mr. GEARAN. "Harold Ickes, Alan Carver at Department of Justice—bad guy."

The CHAIRMAN. Why is he bad? Because he is independent?

Mr. GEARAN. Senator, I think what I can best provide to you—

The CHAIRMAN. But why is he a bad guy?

Mr. GEARAN. I'm sorry?

The CHAIRMAN. Why is he a bad guy?

Mr. GEARAN. I don't recall anything more than Harold responding, as I read this, and do my best to recall for you.

The CHAIRMAN. Well, he concludes with a rather colorful observation and conclusion, doesn't he?

Mr. GEARAN. He does.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman,

Mr. Gearan, nice seeing you again today. We are talking about a series of meetings that you attended and took notes at. How would you describe these meetings? What was the purpose or the mood during these set of meetings that you attended?

Mr. GEARAN. To your second point, Senator, the mood was or the context was, at the beginning of this year, Mr. Ickes had just joined the White House staff as the Deputy Chief of Staff, and there was an effort, as one of my notes I believe say, that we should have an affirmative strategy within the White House to try to put together the information, we would need to get the truth out, to get out—the information that reporters were inquiring about in the best way we could. These meetings reflect two things, I believe. Number one, an effort within the White House to put together the information that would be needed to deal with these issues, whether that was a chronology or the question and answers or the other kinds of materials that these notes reference.

It is particularly important, Senator, because at this time at the beginning of January, there were questions about the White House handling of this matter, that the White House had announced Sunday that the documents were already at Justice. On Monday, we had to say there would be a delay because they were not there yet. The question was a network story, frankly, about the White House handling of this matter.

So, there was I think even an increased effort and need and recognition of the importance that we be correct, that we not misstate any particular fact because then the last thing we would need is to come back and have to restate something or correct something or to amend a statement that the White House issued.

Second, this was a period of time where there was an internal debate within the White House, which the notes are quite clear on, as to whether the President should call for an Independent Counsel or not. Those notes reflect the differing views on that matter. What I most recall certainly is the effort to try to be affirmative in our

presentation and to make sure that we had the facts. Frankly, having worked for a little bit as a reporter, I found that a responsible thing to do, that we would have the correct information.

Senator GRAMS. All right. Now knowing what you know about these meetings, you left in August, about 8 months later. Your nomination to serve as Director of the Peace Corps was reported out of the Foreign Relations Committee on August 10, 1995; is that correct?

Mr. GEARAN. That's correct.

Senator GRAMS. Your nomination was confirmed by the Senate the next day, August 11, 1995?

Mr. GEARAN. That's correct.

Senator GRAMS. During this time, the Whitewater investigation was going full steam. You knew about these notes and these meetings. In fact, if you will recall, I had an opportunity to meet with you regarding your nomination to the Peace Corps and during our conversations, you never brought up the notes to the Whitewater incidents and we had no reason to talk about that. I didn't bring them up because I had no knowledge of your participation in that. So it wasn't part of our conversation. But the fact is that you were aware of these notes, you were aware of the subpoenas that had been issued dealing with this information and yet never offered these or never presented these notes ahead of time.

Mr. GEARAN. Senator, for the purposes of production during that period of time, I worked with my counsel to provide this Committee, the House Banking Committee, this predecessor committee, the Special Counsel, and the Independent Counsel any information that could be helpful and would be responsive to individual subpoenas or requests for information. These were not during that period of time.

Senator GRAMS. But you were aware of the investigation that was going on by this Committee and the House?

Mr. GEARAN. Certainly, Senator.

Senator GRAMS. No official request, I understand it, had come from this Committee asking for the documents before your confirmation. But I have heard your explanation for complying with subsequent requests or subpoenas. But at the time you didn't feel you had an obligation to turn over these notes ahead of this time?

Mr. GEARAN. Senator, at the time of my confirmation, which I think was the week before my appearance before this Committee, those documents I understood as being Communications Office files, and I did my very level best to respond to every inquiry that has been made. I have tried to do my best effort to respond at every step of the way to the various investigations that have gone on with this matter. I have worked hard to do that.

Senator GRAMS. These notes would not have been included in those efforts?

Mr. GEARAN. These notes were not responsive to any previous inquiry?

Senator GRAMS. When we were talking about the whole investigation dealing with Madison Guaranty Savings & Loan specifically and the investigation dealing with issues around Whitewater, and just to read some of the notes that were indicated, taken into your notes here, indicated that President Clinton called Mr. Hale several

times. The notes indicate alleged conversations between Hale, McDougal, and Tucker about Madison problems, that Madison's financial problems, needing to get money into Madison, your notes reflect that these were discussed. You don't recall when you first learned of the allegations of the meetings again between Clinton, Hale, and McDougal.

So these were all in these notes, all dealing with the investigation, and while they might not have been specifically asked for in detail, but you knew they were within the scope of the investigation, but yet did not cooperate. I think it is more not of cooperation, but a lack of cooperation with this Committee.

Mr. GEARAN. Senator, the notes I think that you referred to were reporter's inquiries to me when I was the Director of Communications at the White House. Those were reporters' questions posed to me. I've done my very best to respond completely and accurately to every individual request of this Committee, and I will continue to do so. There has been no instance where I have not appeared before this Committee or the House Banking Committee or the Grand Jury on occasions or the Inspector General of the Department of the Treasury. I have tried my very level best to cooperate at every step of the way.

To the extent that these in your judgment would have been responsive in a previous instance, I would be happy to review this with my counsel, who worked with me on the production. But most sincerely, Senator, for 2 years, from the initial request from Mr. Fiske to Mr. Starr to the House Banking Committee to your predecessor committee to this Committee, which I respect the U.S. Senate for calling, I have done my best to respond.

Senator GRAMS. Were you asked by the Independent Counsel's Office at any time to produce these documents? If not specifically, at least documents related to anything dealing with Whitewater.

Mr. GEARAN. I have at the request of the Independent Counsel produced everything that was responsive.

Senator GRAMS. But these notes didn't come until January, but yet they dealt with Whitewater.

Mr. GEARAN. Senator, in terms of the Independent—in terms of this Committee, when I received requests and I personally have not been, but when the White House has been subpoenaed for these documents from the Committee, I have gone through them with the best care that I can take. They were segregated in my files for that purpose and certainly no effort was made to be anything but the most compliant with any request for information.

I honor the subpoena power of this Committee. I honor the subpoena power of any investigative authority. And there has been no effort on my part not to be compliant in every way. Personal appearances or documents or depositions—

The CHAIRMAN. Mr. Gearan, we have heard that.

Mr. CHERTOFF. I want to ask you a question. Frankly, I tell you, I have a vivid recollection of you being before the Banking Committee in July 1994. First of all, let's get it absolutely clear under oath on the record. The records, the notes you turned over on January 31, 1996, including notes of the meetings that you have been testifying about here and the notes of a 2-hour meeting, give or take

a few minutes with Mr. Gerth and Mr. Lindsey, you had that in your possession in 1994; right?

Mr. GEARAN. Those were my files from the White House.

Mr. CHERTOFF. You were aware of their existence, right?

Mr. GEARAN. They were segregated in that group of files.

The CHAIRMAN. But you knew that you had the notes?

Mr. CHERTOFF. They were segregated and put aside in a certain area.

Mr. GERAN. That's correct.

Mr. CHERTOFF. Your notes and your handwriting; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. On July 23, 1994, under oath before the Senate Banking Committee, at page 24 of your testimony, you were asked about an October 14th meeting you had with Jean Hanson from Treasury, where you received information, and the question you were asked was what you recalled about that meeting, and you answered on page 24:

Again, for the part of the meeting that I was at, these are the notes that I took because these were questions to Treasury and about an RTC matter. This was one of the first contacts I thought references that I can recall for Whitewater. This was not on my radar screen, Whitewater, at this point in time.

But in fact, 3 weeks before this October 14th meeting which you testified about under oath, you had sat down and had a lengthy meeting about Whitewater with Mr. Gerth and Mr. Lindsey. There is a telephone message to you on September 23rd, shortly before the October 14th meeting discussing Castle Grande, your own handwriting. You have questions about the Hale meeting on September 23rd. Within 3 weeks you have this October 14th meeting and yet you come before the Banking Committee and you swear that the October 14th meeting was the first time it was on your radar screen.

Yet if we had had the September 23rd telephone message, for example, we would have known quite to the contrary that it was all over your radar screen, that you were able to write about the three conversations David Hale had with Bill Clinton, that there was a meeting on Castle Grande. And I have to ask you, Mr. Gearan, it never occurred to you during your deposition in preparation for those hearings or during your sworn testimony under oath in 1994 when you were asked about whether Whitewater was on your radar screen, it never occurred to you to go back and look at those segregated notes and determine that in fact it was dead center on your radar screen?

Mr. GEARAN. Mr. Chertoff, as I testified in my deposition, I would not have placed this at that point in time. I have no reason to doubt it.

Mr. CHERTOFF. What does it say? September 23, 1993. You don't have to place it. Right in front of you it says September 23, 1993. There is a message from someone at The New York Times. Would you agree with me that September 23, 1993 is before October 14, 1993?

Mr. GEARAN. I would agree with that.

Mr. CHERTOFF. And that in your notes you had a document that indicated that on September 23rd, this reporter was anticipating doing a story tomorrow and had questions for you, which means

that you—and you wrote down your notes of your conversation with Mr. Engleberg and in it there is discussion of Castle Grande and David Hale. This was right in your notes that you had segregated, absolutely conclusively demonstrating that 3 weeks before your October 14th meeting, you were dealing with this issue. Yet you came before the Senate and you didn't think those notes were relevant?

Mr. GEARAN. Mr. Chertoff, as I tried to say in my deposition, I did not recall that this had happened in September.

Mr. CHERTOFF. How do you explain September 23, 1993? Doesn't it say it there?

Mr. GEARAN. As I said, I have no reason to dispute that, Mr. Chertoff.

Mr. CHERTOFF. No, you had your notes segregated; right?

Mr. GEARAN. My point is this: The questions I have been asked and I have tried to be responsive to the Committee on is when was Whitewater on my radar screen. As my memory in my deposition and in my testimony from last year or today would be, I would not have placed it that early. But I have no reason to dispute that.

Mr. CHERTOFF. But Mr. Gearan, you had the notes. You didn't have to rely on your memory. The notes showed a 2-hour meeting with Gerth about David Hale.

The CHAIRMAN. Clearly you indicated that was not the first occasion. You might not know the exact month, but you had a pretty important conference with regard to White House personnel who were concerned about this meeting with Gerth and this interview. So you might have thought one was in September, but you indicated this was the first time. You said the meeting in October was the first contact. That wasn't true. You had this on your radar, but you said you didn't recall that. This was important. We are talking about the President, the First Lady, what they may have done, Castle Grande. You went in—by the way, is that your note?

Mr. GEARAN. Yes, Senator.

The CHAIRMAN. So you took that, then?

Mr. GEARAN. Yes, Senator.

The CHAIRMAN. You never reviewed it before you came before this Committee? You were aware of this contact, weren't you?

Mr. GEARAN. My notes from the Gerth meeting were not dated.

The CHAIRMAN. But you remembered the meeting.

Senator DODD. Can we give him a chance to answer. I appreciate your point. I understand that, but give him a chance to answer.

The CHAIRMAN. I am going to make an observation. You certainly knew that you had a rather extensive contact that lasted for a period of time with respect to this and you had noted this as well. So when you said, well, my first time was this other occasion, that was not correct.

Mr. CHERTOFF. And you talked to the President about it.

Senator DODD. Wait a second. Give him a chance to answer.

The CHAIRMAN. Is that true, that wasn't correct?

Senator DODD. You are saying what he's going to say, why don't you ask him if it wasn't correct.

Mr. GEARAN. Why don't you repeat the question, Mr. Chairman?

The CHAIRMAN. Didn't you have prior contact and wasn't this matter on your radar screen before the October meeting?

Mr. GEARAN. Mr. Chairman, I have stated previously that the October—

The CHAIRMAN. You are not being responsive to the question. I would like to know whether—

Senator DODD. Mr. Chairman, let him answer the question, with all due respect.

The CHAIRMAN. Well, with all due respect, the answer is not responsive. I am asking you whether your testimony—

Senator DODD. If you don't like the answer, that is one thing. That is perfectly legitimate. Let him answer.

The CHAIRMAN. I want a responsive answer. The question is this: In your testimony before this Committee, you said the October meeting was the first time Whitewater was on your radar screen? Now was that accurate?

Mr. GEARAN. If we could just put that up on the screen again, that would be helpful to me.

The CHAIRMAN. Page 24.

Mr. GEARAN. I think it says, "This was one of the first contacts, I thought, references I can recall for Whitewater."

The CHAIRMAN. Go ahead. Read the rest.

Mr. GEARAN. "This was not on my radar screen, Whitewater, at this point." What I can help you with and let me try to be responsive is that the best I can recall, this was one of my first contacts with Whitewater. My Gerth notes are not dated. So, I would have placed the story later. I don't believe they were wrote for several weeks. But I will accept that this conversation happened at this point in time in September.

Mr. CHERTOFF. Mr. Gearan, I want to put up S20454 through 56. This was a newspaper article Bruce Lindsey sent you. It says "Mark: FYI, Bruce—Judge expects to be indicted in SBA loans." This is S20454. We are putting it up. This is something that you received within days after the Gerth meeting for 2 hours. It is directed to you from Mr. Lindsey.

Mr. GEARAN. Mr. Chertoff, I don't know when I received it. I don't know when I received it. I don't dispute it was in my files.

Mr. CHERTOFF. You think you got it months after the article was written?

Mr. GEARAN. I don't know when I received it. My point is this, in terms of the radar screen at this period of time, because Mr. Lindsey was the principal point of contact on Arkansas matters, because he would be the person that I would solicit information from in the instance of the Gerth conversation, because there were so many names and players of which I was unfamiliar with and I was grateful that Mr. Lindsey was there because he was more knowledgeable than I—

Mr. CHERTOFF. This is not a responsive answer.

Senator DODD. Come on now.

The CHAIRMAN. Here is the problem. Our time is up. I want to make a point. In your notes—these are not just any notes. The notes of September 23rd, put them back up on the Elmo, please. Would you read that? "There are 3 occasions of"—

Mr. GEARAN. What is the number of that again, Senator?

The CHAIRMAN. The number is S20452.

Mr. GEARAN. I will read it from here. "There are 3 occasions of conversations with BC."

The CHAIRMAN. With Bill Clinton.

Mr. GEARAN. "February 1986—Bill Clinton meeting on Castle Grande."

The CHAIRMAN. Read the next one.

Mr. GEARAN. "Does Bill Clinton have recollection of meeting? If so, what happened?"

The CHAIRMAN. Then you have what? What does it say?

Mr. GEARAN. "No."

The CHAIRMAN. At the top right-hand side, what does it say?

Mr. GEARAN. "No recollection, doesn't believe it happened."

The CHAIRMAN. So you checked with somebody to see if the President had any recollection with respect to these meetings; is that correct?

Mr. GEARAN. I'd have checked with Mr. Lindsey, I believe, yes.

The CHAIRMAN. Now, you actually went back to the President of the United States, whether directly or through Mr. Lindsey, but when you came before this Committee and we asked you, you had no recollection of Whitewater being on your screen? This isn't just a report from a reporter. You actually went to a Presidential Assistant, Bruce Lindsey; right?

Mr. GEARAN. Yes.

The CHAIRMAN. You reported to him that there were three meetings. There were three meetings in 1986 and then, "Does Bill Clinton have recollection of the meeting? If so what happened?" That's your question; right?

Mr. GEARAN. That is I would assume Mr. Engleberg's question. That is my handwriting.

The CHAIRMAN. It is your handwriting. So somebody wanted to know. You then followed up on this.

Mr. GEARAN. I would have asked Mr. Lindsey.

The CHAIRMAN. Mr. Lindsey got an answer from whom?

Mr. GEARAN. I would take it to mean the President.

Senator DODD. Mr. Chairman, can I ask, what is the significance of all of this?

Mr. CHERTOFF. The significance is whether the testimony that he gave is accurate testimony and whether his failure to produce the records is justifiable.

Senator DODD. Beyond that, tell me the significance in the context of where this is going.

The CHAIRMAN. I think it goes even further. We have a witness who has testified previously before this Committee in a manner that raises some very real questions just in terms of failing to respond to this Committee concerning our investigation. He says that the first time he was aware of this was at this—

Senator DODD. What is the point, though?

The CHAIRMAN. Indeed, there was a very important meeting and series of meeting because indeed if Mr. Lindsey checked on it, when did he get back?

Senator DODD. I still ask the same question, so what?

The CHAIRMAN. His failure to come forward and produce these documents in a timely manner, withholding these documents from the Committee—

Senator DODD. Now wait a minute.

Now wait a minute, Mr. Chairman.

The CHAIRMAN. That is—

Senator DODD. That's your interpretation. There's no evidence that happened.

The CHAIRMAN. Given the lack of response.

Senator DODD. You can't say that now.

The CHAIRMAN. Mr. Gearan, did you discuss whether these documents should be produced at an earlier time with anybody prior to their production on January 31st?

Mr. GEARAN. Mr. Chairman, when I was at the White House, the production was—I reviewed the production with my counsel and then that's the process. I did not discuss with the White House Counsel how they were producing it to the Committee at this point in time, no, I did not.

The CHAIRMAN. Did you—

Senator DODD. Can we have some time back? This has gone on now for 25 minutes.

The CHAIRMAN. Certainly. Senator Grams, do you want to make an observation?

Senator DODD. The time is 25 minutes, Mr. Chairman.

The CHAIRMAN. Fine. The Senator has a question. We will do it on his next turn. Go ahead.

Senator SARBANES. I want to first make an observation that as of August 1995, this Committee had only requested documents related to the White House-Treasury contacts and to Foster's office. Let me repeat that again. When did you have your hearing on the Peace Corps confirmation?

Mr. GEARAN. August 10th or 15th.

Senator SARBANES. Of 1995?

Mr. GEARAN. Of 1995, yes.

Senator SARBANES. As of August 1995, this Committee had only requested documents related to the White House-Treasury contacts and Foster's office. Now in response to that request, you provided material; is that correct?

Mr. GEARAN. I did, Senator.

Senator SARBANES. Now the material that is being provided goes beyond that request. It responds to subsequent requests; is that not the case?

Mr. GEARAN. That's my understanding, yes, Senator.

Senator SARBANES. On that point, because of this inadvertent transfer of these documents, they weren't provided until January, although the request for them was prior to that, but the request for them was subsequent to the dates that are being referred to here this morning. Is that not the case?

Mr. GEARAN. That's correct, Senator.

Senator SARBANES. Well, now, I don't see how, Mr. Chairman, we can assault this witness for withholding documents.

The CHAIRMAN. We will attempt to make that—what our concern is. We are out of time.

Senator SARBANES. I want to underscore the—

The CHAIRMAN. If you want a response now, I'll ask Mr. Chertoff.

Senator SARBANES. I'm happy to have you do it on your time.

The CHAIRMAN. If you want a response, we will respond on our time or respond to the question now, because it goes even further.

Senator SARBANES. But as of August 1995, this Committee had only requested documents related to the White House-Treasury contacts and to Foster's office. Mr. Gearan had provided those documents. He had responded to that request. Subsequent, additional requests were made. We now have these documents and the response to that ran into this problem of the documents being moved over to the Peace Corps, which I take it when you discovered that, you regretted that happened?

Mr. GEARAN. Very deeply.

Senator DODD. That same point, Senator Hatch had it right this morning when he began his round of questioning, he commended you for the promptness in which these documents were turned over. I recall when documents ended up in a shredding machine in this town. I remember when documents and information, because someone stuck their foot on a recording pedal, were lost for a number of minutes. I remember when ashtrays were being used to handle documents.

Here we have people who find documents and turn them over and explain what happened and you move from the White House to the Peace Corps, very understandable. Common sense would indicate those things do happen. Senator Hatch has it right. It is perfectly legitimate to go over the notes and talk about what was meant by language and so forth in those notes. But the implication somehow that this witness is obstructing justice in the context of what we have seen happen in this town on previous occasions is ludicrous. That's our point we are trying to make here. What is the point of all of this? We are trying to create a fire where none exists, in a sense.

Senator SARBANES. Mr. Gearan, let me ask you this question: When you had this discussion about the naming of an Independent Counsel and the reviewing of past Independent Counsels, I understand that took place in this meeting; is that correct?

Mr. GEARAN. Yes, sir.

Senator SARBANES. In this discussion, did this quote that Senator Dole's made in the St. Louis Post Dispatch of January 9, 1989, where he said:

I say let's get on with it. The whole Independent Counsel theory ought to be reviewed by Congress. They seem to have an unending license to do somebody in.

Was that raised in that meeting?

Mr. GEARAN. I don't recall it, Senator. There was discussion about a similar point.

Senator SARBANES. Let me ask you this question. Did it come up, this statement by Senator Dole on August 7, 1992:

In far too many instances, the investigations conducted by Independent Counsels have turned out to be partisan political fishing expeditions, expeditions which have accomplished nothing more than wasting millions of tax dollars.

Did that come up?

Mr. GEARAN. I don't recall that, Senator, no.

Senator SARBANES. How about a statement he made in The Los Angeles Times on December 27, 1992:

Lawrence Walsh is completely out of control. Now, he wants to turn his 6 years of incompetence into a personal vendetta against President Bush. There is only one final act for Mr. Walsh. Immediate resignation.

Did that come up?

Mr. GEARAN. I don't believe so, Senator.

Senator SARBANES. How about the testimony that he gave to the Senate—this is Senator Dole now, to the Senate Governmental Affairs Committee in which he said:

The statute places no limits on the amount of time and money an Independent Counsel can spend on his target, nor does it monitor the motives behind the Counsel's actions. It has allowed someone like Lawrence Walsh to go down every blind alley pursuing more conspiracy theories than Oliver Stone.

In your review of the history of Independent Counsels, did this statement of Senator Dole's come up? Do you recall?

Mr. GEARAN. I don't recall that, Senator.

Senator SARBANES. You don't recall any of these. Actually, you all missed an important dimension, it seems to me, in your discussion of the situation with respect to an Independent Counsel that you didn't have of these statements by Senator Dole with respect to the Independent Counsel made over quite a period of time and some of them extremely strong. But that was a missing dimension. That would have been an important dimension to have in your conversations, would it not?

Mr. GEARAN. I think it would have added to the discussion.

Mr. BEN-VENISTE. Mr. Gearan, let me turn back to, since there have been such extended discussion about the "bad guy" description of Mr. Carver, would you turn to your notes at page 579. Underneath the line where it says, "Alan Carver at DOJ—bad guy." And I don't mean to imply that Mr. Carver did anything untoward or improper in connection with his investigation, he has testified before this Committee, I think quite forthrightly and candidly, as have several career Department of Justice attorneys who have all testified to their involvement in the early stages of this investigation. But underneath that reference, it says, "When Kendall called, when he called on speakerphone were two FBI agents and Jim Nixon." Does that indicate to you that the reason for that reference is that Mr. Carver did not disclose the fact that the two FBI agents were monitoring the call?

Mr. GEARAN. That could be a fair reading of it. I don't recall it specifically.

Mr. BEN-VENISTE. Do you have a specific recollection?

Mr. GEARAN. Of?

Mr. BEN-VENISTE. Of the context in which this comment was made about Kendall and the speakerphone.

Mr. GEARAN. Beyond this, no, no, sir.

Mr. BEN-VENISTE. Let me go to the issue that Senator Dodd raised about the question of the accuracy of your prior testimony. Now the contact that you received from the Gerth call, your notes are undated; is that correct?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. When were the stories actually written in relation to the time Mr. Gerth contacted the White House providing the White House with information and requesting its reaction?

Mr. GEARAN. My best recollection is the end of October, the beginning of November.

Mr. BEN-VENISTE. And that would have been subsequent to the time that you were asked about?

Mr. GEARAN. Correct.

Mr. BEN-VENISTE. You were asked about October 14th; correct?

Mr. GEARAN. I was asked—

Mr. BEN-VENISTE. In your testimony.

Mr. GEARAN. Yes, I was asked about the 14th, correct.

Mr. BEN-VENISTE. So that, in your mind, you associated the contact as having occurred later?

Mr. GEARAN. The Gerth meeting?

Mr. BEN-VENISTE. Yes.

Mr. GEARAN. I would have, but I recognized that the dates indicate otherwise.

Mr. BEN-VENISTE. Now to follow up on Senator Dodd's question, what possible motive might you have to mislead this Committee, if you indeed had a recollection? Was there some reason to cover up the fact that Mr. Gerth had called the White House?

Mr. GEARAN. No.

Mr. BEN-VENISTE. That was well known, was it not?

Mr. GEARAN. That he had called? I don't know how well-known it was. I certainly had no motive not to accurately represent that conversation.

Mr. BEN-VENISTE. I have to say, from my point of view, I don't see that there could have been any motive to mislead because of the significance of this information. Maybe somebody will point that out.

In terms of the notes that you have provided, let's go back to the substance of them so that we can at least address what is in there. On 575, you are talking again about Beverly Bassett. Do you see under point 5?

Mr. GEARAN. Yes.

Mr. BEN-VENISTE. Why don't you read that.

Mr. GEARAN. Number 5, "PB," which I would read to be Paul Begala, "Bruce Lindsey, Waldman to Arkansas to meet with Beverly Bassett, try to poke holes in their story."

Mr. BEN-VENISTE. First of all, do you have any reason to believe that either of those three individuals went to Arkansas or met with Beverly Bassett?

Mr. GEARAN. No, I do not.

Mr. BEN-VENISTE. Now, "try to poke holes in their story," who is the "their" that you are referring to?

Mr. GEARAN. I guess those would be alleging that there was preferred treatment for Madison Guaranty.

Mr. BEN-VENISTE. Then underneath that, it read—

Mr. GEARAN. "Try to get independent validation from securities attorney, search of Arkansas regulation."

Mr. BEN-VENISTE. Was it considered to be important to the issue again of whether there was some impropriety, some favoritism shown by Ms. Bassett, to have Ms. Bassett come forward and again repeat her truthful story with respect to what occurred back in Arkansas in 1985 and 1986?

Mr. GEARAN. Yes. I think this reflects the effort of that period of time to, in my notes, get an independent validation from a securities attorney that what she did was correct and then a search of Arkansas regulation to ensure that, in fact, what she did was the appropriate and the right thing to do.

Mr. BEN-VENISTE. Mr. Chairman, we will cede back the remainder of our time.

The CHAIRMAN. You have gone over these notes for a period of time now; right?

Mr. GEARAN. Mr. Chairman, I was asked to come last Thursday, and I had my deposition Monday night.

The CHAIRMAN. But you have had these notes since January 31st; is that right?

Mr. GEARAN. No, and I have not reviewed them. I just reviewed them since—

The CHAIRMAN. You haven't reviewed them?

Mr. GEARAN. Since I was notified last week that I would be invited for a deposition.

The CHAIRMAN. Let me ask you to look at the second page of your notes of January 7, 1994. It is S20576. Going down to Roman numeral III.

Mr. GEARAN. I'm not sure—I think that is HI, Harold Ickes. Is that what you are referring to? That is not a III, that is HI.

The CHAIRMAN. It is? Well, I am looking at "Whitewater 1/7/94." S20575.

Mr. GEARAN. OK. Number 3?

The CHAIRMAN. Number 3. Who is saying this?

Mr. GEARAN. My notes don't reflect who is saying this, and I don't recall.

The CHAIRMAN. Read it.

Mr. GEARAN. Number 3, "We cannot affect the scope of the prosecutor. Politically—fewer questions to lesser the exposure."

The CHAIRMAN. So there was concern over the scope of the Special Prosecutor?

Mr. GEARAN. I think there was, as the other notes state, that there was concern for the range of time and the frequent nature and past history of other Special Counsels that have digressed from their original work.

The CHAIRMAN. Now, Mr. Gearan, listen to me closely. Wasn't there also discussion about the Attorney General with respect to the appointment of a Special Prosecutor?

Mr. GEARAN. Mr. Chairman, there was, as my notes reflect, a conversation that if the Attorney General got, I think, out front of the White House on calling for a Special Counsel. Beyond that, I don't recall any.

The CHAIRMAN. Go to the next page, down to where it says, "HI."

Mr. GEARAN. Yes, Senator.

The CHAIRMAN. You want to read that?

Mr. GEARAN. Yes, Senator.

The CHAIRMAN. "HI" is Mr. Ickes, and you record him having said this; correct?

Mr. GEARAN. Yes, that is correct. "Special Counsel—three major problems. One, HRC," Mrs. Clinton, "adamantly opposed. Two,

Reno has shut the door. Three, if we ask it looks like we have ducked."

The CHAIRMAN. Let's go to number 2. What does that mean?

Mr. GEARAN. I would read that to mean that the Attorney General would make up her own mind about the Independent Counsel.

The CHAIRMAN. Read it again, number 2.

Mr. GEARAN. "Reno has shut the door."

The CHAIRMAN. "Reno has shut the door." Now tell me what you possibly could have meant? We also have notes of the Deputy—and we will give them to you so that when we take a break you can reflect on them because we are going to touch on this—Mr. Altman reflecting his conversations with the Deputy Chief of Staff, Maggie Williams, also I'm summing it up, but we will put it on the Elmo, concerning their attempt to deal with the question of scope with the Attorney General and how they were rebuffed.

Here is Mr. Ickes at the meeting saying, "One, Hillary Rodham Clinton adamantly opposed." The Deputy Secretary of the Treasury indicates the same in his notes. He says that you can forget about everything unless this thing is handled; and number 2, at this meeting, you are there, what does it say? Read it, number 2?

Mr. GEARAN. "Reno has shut the door."

The CHAIRMAN. Now what are we to believe? What did you mean by that? "Reno has shut the door"? What did she shut the door on?

Mr. GEARAN. Senator, as I said, these are Mr. Ickes' remarks.

The CHAIRMAN. I understand, but you are an intelligent person, do you believe that you are being candid? What did Mr. Ickes mean by that?

Mr. GEARAN. Senator, I can't go too far beyond this, because I do not have a detailed recollection.

The CHAIRMAN. What did you understand it to mean? Did anybody attempt to negotiate the scope with the Attorney General and she shut the door? Come on. We are not in an isolation booth. What happened?

Mr. GEARAN. Senator, I do not understand it to mean anything like that, nor do I recall any conversation—

The CHAIRMAN. What is a reasonable interpretation? You wrote this note. You listed three major problems. What does it say, "Special Counsel"—

Mr. GEARAN. "Three major problems."

The CHAIRMAN. Then you took the time to enunciate them. Number 1 is what?

Mr. GEARAN. "HRC adamantly opposed."

The CHAIRMAN. What does that mean?

Mr. GEARAN. That Mrs. Clinton was opposed to a call for a Special Counsel.

The CHAIRMAN. To the appointment of a Special Counsel?

Mr. GEARAN. That has previously been noted, yes.

The CHAIRMAN. There were discussions about this. As a matter of fact, later your notes mention the fact that the suggestion was raised that various people speak to the First Lady; is that true?

Mr. GEARAN. There were suggestions that different Washington attorneys would get together in one instance and then later to speak with Mrs. Clinton.

The CHAIRMAN. About persuading her to change her mind, isn't that true?

Mr. GEARAN. To talk about the Independent Counsel, yes.

The CHAIRMAN. Yes, right. So this was important and had been noted before?

Mr. GEARAN. Mr. Chairman——

The CHAIRMAN. Because before you made a flip remark about how husbands and wives have disagreements. But, this wasn't just petty disagreement. You even noted, and you must remember this, that even the President couldn't speak to Mrs. Clinton, about the question of the appointment of a Special Counsel, isn't that true?

Mr. GEARAN. To reopen whether or not we should have it. I did not mean to be flip, Senator.

The CHAIRMAN. I understand. Let's go back. Even the President couldn't get Mrs. Clinton to change her mind on her opposition to the appointment of a Special Counsel; is that true?

Mr. GEARAN. Well, my notes from that meeting I would read it "try to reopen it"——

The CHAIRMAN. I know this is in your notes. But, what do you recall about that?

Mr. GEARAN. I recall that week that the President and Mrs. Clinton opposed the appointment of a Special Counsel at that point. My notes——

The CHAIRMAN. Specifically, it says even the President couldn't get the First Lady to change her mind. Isn't there some other conversation when you talk about the Secretary of State possibly speaking to her?

Mr. GEARAN. That's in my notes, sir, and Bob Barnett.

The CHAIRMAN. Bob Barnett. This matter was pretty important, wasn't it?

Mr. GEARAN. I think everyone understood there were calls to an Independent Counsel and editorials from Capitol Hill.

The CHAIRMAN. You couldn't get Mrs. Clinton to agree. It was important because you even thought about having the Secretary of State intervene because the President couldn't do anything. Isn't that true?

Mr. GEARAN. I would like to answer, Senator. There were previous references to bringing in the best counsel of other attorneys, which was solicited. Mr. Gergen references it I believe on that page, to bring in Washington attorneys to talk about whether or not we should have an Independent Counsel.

The CHAIRMAN. Well, we understand that. We are talking about the First Lady's adamant opposition and the possibility of having other people speak to her because the President couldn't. Let's move on. Number 2, after the discussion about the Independent Counsel, the second question concerns the Attorney General. What did Mr. Ickes say?

Mr. GEARAN. Number 2, "Reno has shut the door."

The CHAIRMAN. Who said that?

Mr. GEARAN. I would read that as Mr. Ickes.

The CHAIRMAN. In connection with what? Discussing whether an Independent Counsel would be appointed? And the scope of the inquiry?

Mr. GEARAN. I don't recall, Senator.

The CHAIRMAN. You don't recall one of the most important aspects of the meeting even when you took the time to note three major problems, number 1, the question of the First Lady; number 2, "Reno has shut the door." What did she shut the door on? What does it commonly mean when somebody shuts the door?

Senator DODD. He has answered the question. I understand your point. But it has been 2 years since this conversation took place. It was in January 1994. Even when you keep notes and I realize it is important, but the idea of somebody to go back and absolutely recall exactly what was said, he has given his best interpretation of it and the Committee has to move on. Just keeping at it, in all fairness to our witness here.

The CHAIRMAN. In all fairness to our witness we wanted to give him an opportunity to be more forthcoming. I hoped that you would be more responsive because reasonable people, I believe, have a difficult time—

Senator DODD. Mr. Chairman, as you know, though, what happens is a week later on the 12th of January the President calls for the establishment of Independent Counsel. We can't avoid that fact. Seven days later, despite these notes, the President calls for one, and a week later—that is important.

The CHAIRMAN. We are attempting to find out what took place. You are going to find out later that people do certain things and take certain action, and I believe that this Committee has been and was entitled to more information from a variety of sources and people. And it is only through this almost painstaking process that we have begun to receive some of this information that the American people and the Independent Counsel have a right to know.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Gearan, it is just perfectly clear if you add your notes, even if you don't want to go beyond your notes which at times apparently you don't want to do, if you go to your notes of the meeting of the 5th of January, you see Mr. Nussbaum complaining about an outside counsel as not being subject to control.

Then you get to this day on the 7th, 2 days later and you hear that Reno has shut the door, and then totally independently we have the diary where Roger Altman, who, as you will recall, ultimately had to resign his position as Deputy Treasury Secretary and who was criticized for whether he was fully forthcoming with the Committee in 1994, Altman totally independently becomes aware of the fact from Maggie Williams that the White House was trying to negotiate the scope of an Independent Counsel with Reno and having enormous difficulty.

So when you look at these together, what they add up to is that shutting the door means that the Attorney General wouldn't have any part in any negotiations over the scope of the Independent Counsel. Now, I take it you understood in the last analysis, Mr. Gearan, and it comes up again and again in the notes, that if the Attorney General decided in her independent judgment to appoint an Independent Counsel, she would do it; right?

Mr. GEARAN. Right.

Mr. CHERTOFF. Nevertheless, there was a lot of time spent in the White House thinking about the position to take on this; right?

Mr. GEARAN. On the position of the President, correct.

Mr. CHERTOFF. There was concern about the fact that Ms. Reno shut the door, because that was identified by Mr. Ickes as a "major problem." Is that right?

Mr. GEARAN. That's what my notes reflect.

Mr. CHERTOFF. To get back to the issue of Mr. Carver so that we can put the whole picture in context, the concern didn't merely relate to the Independent Counsel. There was concern even about the career prosecutors, because I am struck by the fact of the use of the term "bad." You see when Mr. Nussbaum talks about the bad guy, the bad prosecutor, he is talking about the guy who smells corruption and can show some things about the people around the principal. When we get to Mr. Carver, Mr. Ickes talks about Mr. Carver at DOJ as a "bad guy." "These guys are F---ing us blue." Mr. Gearan, you are not going to suggest to us that Mr. Ickes was expressing his delight over the independence and toughness being exhibited by the Department of Justice?

Mr. GEARAN. No.

Mr. CHERTOFF. He was angry because he felt that they were "F---ing us blue." He was angry because he felt that they were too independent for the White House; right?

Mr. GEARAN. Well, I don't know if you would describe it that way or not.

Mr. CHERTOFF. You were in the meeting; right?

Mr. GEARAN. Uh-huh.

Mr. CHERTOFF. You took notes about it?

Mr. GEARAN. I did.

Mr. CHERTOFF. I assume that all of your notes were taken down accurately, to the best of your ability?

Mr. GEARAN. The best of my ability, yes, sir.

Mr. CHERTOFF. So that when we have Mr. Ickes in, we will be able to rely upon these, to the best of your ability, as accurate renditions of what occurred?

Mr. GEARAN. To the best of my ability.

Mr. CHERTOFF. That's why I am fascinated with the "bad guy" being the independent prosecutor, where he says in December and January of 1993 and 1994, as the record in this hearing amply demonstrates, what was happening was first Mackay and then the Independent Counsel were trying to reach a deal with Hale. You knew what Hale had to say because you heard about it from Gerth; is that right?

Mr. GEARAN. I sat in on the Gerth meeting, yes, I heard from Mr. Gerth.

Mr. CHERTOFF. He was trying to get documents or he had obtained documents from the White House about Whitewater; right? That's what the prosecutors were trying to do; right?

Mr. GEARAN. Could you repeat that, Mr. Chertoff?

Mr. CHERTOFF. The prosecutors, first at Justice and then the Independent Counsel were obtaining and seeking to obtain documents about Whitewater and Madison; right?

Mr. GEARAN. I believe that's correct that DOJ prosecutors were obtaining documents.

Mr. CHERTOFF. So, what was there about this process of first a career prosecutor and then an Independent Counsel trying to deal with David Hale and trying to look into the issue of Madison and

Whitewater? What was it in your understanding that caused Mr. Ickes to say he is "F---ing us blue"? You see my point?

My point is that the opinion is being expressed by Mr. Ickes here and you were in the meeting, so you must have had some common understanding of what is being discussed is that the fact that the Independent Counsel is out there—rather, the career prosecutor is out there trying to do a job of getting information about Whitewater and Madison, of trying to strike a deal with Hale, that someone—this isn't regarded really as someone doing their work, but it is regarded as "F---ing us," meaning the White House, in some way that angers the speaker. Now what was the discussion here?

Mr. GEARAN. Well, beyond what I have already testified, Mr. Chertoff, I believe the discussion was Mr. Ickes expressing in admittedly this colorful language his view that the ongoing investigation at the Department of Justice, given this, didn't evidence the fact that we were being treated in any way or that the Clintons were being treated in any way lightly.

Mr. CHERTOFF. Was he approving of this or was he disapproving? Are the words they are "F---ing us blue" words of approval?

Mr. GEARAN. I think that they are evidence of in a colorful way really—

Senator DODD. Let's not have an analysis. We can go back in the English dictionary here. Is this really necessary? Can we move on?

The CHAIRMAN. I think in fairness, Senator, if the witness would be a little more responsive, because if the witness won't even concede something as obvious as that Mr. Ickes, who was Deputy Chief of Staff was expressing extreme displeasure—at the very least, wouldn't you say that? They were angry, they were annoyed about what the Justice Department was doing. We cannot—

Senator DODD. Surprise, surprise.

The CHAIRMAN. We cannot get the witness who says he is going to testify truthfully to concede that. If it is something he wants to argue over, let him argue and tell us his understanding of—

Senator DODD. He has given you his best recollection. The Chair doesn't like it. I understand that, but that's his recollection.

The CHAIRMAN. Wait.

Senator DODD. Counsel has a bizarre fascination with the language of this memo.

The CHAIRMAN. The fascination is that it was brought up, it is a strong term, so adamantly conveyed that he took it down verbatim and then when he is asked what that means, he is not responsive.

Senator DODD. Mr. Chairman, each Member can have their own interpretation of an answer. I understand that. But he has answered to his best recollection.

The CHAIRMAN. And do you feel comfortable, Senator, with that answer?

Senator DODD. I accept that answer. Two and a half years ago, to have people go back, it is his best recollection. We go back a week, 2 weeks, a month ago and recall meetings that we are involved in all the time. Obviously this was a big story, a lot of press inquiries, a lot of questions about the Independent Counsel, a lot of editorial comment. Here is the Communications Director. He has to answer these questions in a sense. That's what the meeting is

all about. How is any politician in this town surprised about a meeting like this going on? My gosh, when they go on in offices we get less than that, a critical story written in your hometown newspaper, you convene half your staff to talk about it. We are treating this as some bizarre, unique experience.

The CHAIRMAN. We are going to come back, obviously, to this. Since we have gone over our time, I will give the Minority the option of continuing or breaking and starting with you. Take whatever time you want and then we will break. If you haven't used all your time, we will start with you when we come back. We will take an hour break for lunch and when we return I hope that we have calmed down. Depending on when the Minority ends, we will take an hour break.

Senator SARBANES.

Senator SARBANES. Mr. Chairman, just let me make this observation. I think if your attorney called someone in the Justice Department and while he was on the speakerphone they put on two FBI agents and a prosecutor, you might make a comment like the one that is contained in these notes.

Senator DODD. I suspect he might have been a little stronger.

Senator SARBANES. "When Kendall called, when he called on speakerphone were two FBI agents and Jim Nixon." Now it may not bother Mr. Chertoff as a former prosecutor, but I think it would bother most people that they make a phone call and they have two FBI agents and a prosecutor on the speakerphone with them.

Now let me ask you, Mr. Gearan, it wasn't any secret that Mrs. Clinton was opposed to the appointment of a Special Counsel. First of all, let me clarify this. At the time there was no Independent Counsel law; is that correct?

Mr. GEARAN. That's my understanding.

Senator SARBANES. Do you recall that?

Mr. GEARAN. That's my understanding.

Senator SARBANES. In fact, there was an issue in the Congress about whether to reenact an Independent Counsel law?

Mr. GEARAN. Right.

Senator SARBANES. There was considerable difference about that. I quoted what Senator Dole said when he went before the Senate Committee that was holding hearings on the Independent Counsel law, he says: "The statute placed no limits on the amount of time and money an Independent Counsel can spend on his target, nor does it monitor the motives behind a Counsel's action. It has allowed someone like Lawrence Walsh to go down every blind alley pursuing more conspiracy theories than Oliver Stone." He also said in another quote: "Lawrence Walsh is completely out of control."

I could go on at great length with these quotes. Senator Cochran said: "Independent Counsels have too much power and too little accountability. They are beyond the reach of anybody, any power on earth." So, this issue of the Independent Counsel and then the separate issue of the Special Counsel which is named by the Attorney General, correct.

Mr. GEARAN. Correct.

Senator SARBANES. That was the only issue at the time because there was no availability of an Independent Counsel since the statute had expired?

Mr. GEARAN. That's correct.

Senator SARBANES. Now, I take it Mrs. Clinton's opposition to appointing a Special Counsel was that no wrongdoing had been shown and therefore the threshold for doing this had not been crossed; is that the case?

Mr. GEARAN. Yes. That was certainly my understanding of her view, that there was no wrongdoing and that if every time there was a chance that there be a Special Counsel, that this was quite a precedent that would be established.

Senator SARBANES. In fact, you have somewhere else in here in your notes where someone says, well, this is really a matter of principle, because politically we are paying a cost for this or taking a hit on it. I don't remember exactly what the language was.

Mr. GEARAN. That it was a matter of principle and admittedly bad politics, that given the drumbeat at the time, given the sizable press questions, given the editorial writings that were existing during this period of time, that it certainly might have been bad politics. But as my notes reflect, it was a matter of principle for the President and Mrs. Clinton.

Senator SARBANES. Let me turn to the "Reno has shut the door," because I want to try to get some context to that one. My understanding at the time was that the Attorney General didn't want to name a Special Counsel; she wanted the Independent Counsel law passed and have that apply.

But there is a newspaper article of January 7, 1994, that says:

For weeks Reno has said that in the absence of the new law, it would be pointless for her to name a Special Counsel because such a person would not be viewed as truly independent. The Counsel would report to her and she would be responsible for the case. In the current state of the law with respect to the Whitewater case, "I am going to be damned if I do and damned if I don't," Reno said at her weekly news conference yesterday.

Now in fact, there was a lot of newspaper speculation and various sorts of pressures for the appointment of a Special Counsel. But at this point, as I understand it, Reno was expressing her misgivings about doing so. In fact, there is another article that says:

Justice Department spokesman Carl Stern said that Reno, who has urged the restoration of an Independent Counsel law, saw no purpose in appointing a Special Counsel herself. Anyone she appoints, the prosecutors would be under her supervision and influence, Stern said. To take the case away from the career prosecutors would be to create the very kinds of perceptions that she and Congressman Leach are trying to avoid.

Namely, a perception that the career people couldn't do the job.

So you have tried to recollect back about the meaning of "Reno has shut the door" in a statement that says, "Special Counsel, three major problems, One, HRC adamantly opposed," which everyone knew, it was public knowledge at the time. "Two, Reno has shut the door." At that time, the Attorney General was expressing her doubts and reservations about appointing a Special Counsel. Do you recall that? I guess not.

Mr. GEARAN. Now that you have refreshed me with that, Senator, having prepared for this within the week, I have not had a chance to go through all the press clippings for that period that might have shed more light on it for me, for the purposes of this testimony, but I'm aware of those articles now that you read them.

Senator SARBANES. This is part of the context. I think we have to view it in that light. Now eventually, of course, Ms. Reno did—I think the President first decided that a Special Counsel should be asked for?

Mr. GEARAN. That's correct.

Senator SARBANES. Do you recall when that——

Mr. GEARAN. I guess, I'm told the date is January 12th.

Senator SARBANES. January 12th.

Mr. BEN-VENISTE. January 12th.

Senator SARBANES. Then on the 20th, I think she went ahead and named a Special Counsel. That's when she named Mr. Fiske, who, of course, was highly praised. In fact, our own Chairman said:

Fiske is a man of unflinching and uncompromising integrity. I think he is the kind of person who will bring out the truth for the American people so there will be no question as to the thoroughness and objectivity of this investigation.

Mr. BEN-VENISTE. Just to continue, exactly what Attorney General Reno had feared when she had initially closed the door, that is, that whoever she picked, no matter whether he had the reputation of Bob Fiske, who has an outstanding reputation in the United States and has received the praise of Senators from this Committee and is a leader in the Bar in New York and was the U.S. Attorney in the Southern District of New York prior to his appointment as Special Counsel. Nevertheless, exactly what Ms. Reno said would come true did, in fact, come true. When the Independent Counsel statute passed, Mr. Fiske was removed, and the argument given was how could he be objective if he was appointed by the Attorney General.

So, Mr. Starr was substituted in his place. Doesn't that give flavor and context to this statement about "Ms. Reno has shut the door"? All of the statements that she had made prior to January 5th and 6th, and we have read you the contemporaneous statement of the 7th and going back to December, Carl Stern's statement on behalf of the Justice Department, doesn't that put into context the discussion about why this would be an argument against an Independent Counsel, "Ms. Reno had shut the door"?

Mr. GEARAN. I think that is helpful. If I had had the opportunity, as I said, to review more of this period of time through the context of news clips and materials, it would have been refreshed. I certainly can recollect the dilemma that she expressed at the time, that either way, depending on what her decision was, she would face that charge.

Mr. BEN-VENISTE. Now to try to go forward with a line of questioning that Mr. Chertoff has put forward, I guess the implication is that no matter what you did, no matter who was investigating, Mr. Chertoff wouldn't be happy with that because somebody at the White House wouldn't be entirely pleased with whatever that investigative body was doing. You weren't doing back flips and shouting yippee because the Department of Justice was now coming in and interviewing White House personnel. That was disruptive, nobody liked that. If you had your druthers, that would not be on the top of the list of things you wanted to do that day, interviewed by the FBI.

Mr. GEARAN. I think that is a fair statement.

Mr. BEN-VENISTE. At this meeting, this is what they were saying, that Reno had opposed the appointment of Independent Counsel. There was no Independent Counsel statute on the books because it expired, I guess, during the Republican Administration and they didn't want to reauthorize one, and there was a great deal of discussion because of the length of time that Mr. Walsh had gone on as Independent Counsel in the Iran-Contra matter. He spent, I think, \$35 million and took 7 years and there was discussion about the history, a discussion about the advisability, and then a discussion about the independence of the career prosecutors who were handling the matter then.

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. I think we would resume with whatever time we have.

The CHAIRMAN. All right. I will note that you have 3 minutes. We will start with my colleagues on the Democratic side. We will take a break until 2:15 p.m. and then we will resume.

[Whereupon, at 1:15 p.m., the hearing was recessed, to be reconvened at 2:15 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The Committee will come to order.

At the time that we broke for lunch the Minority still had 3 minutes. I will ask them to put at least 5 minutes on the clock. We turn to Senator Sarbanes.

Senator SARBANES. Mr. Gearan, I want to return to this point that you were questioned about at some length about "Reno has shut the door" when you made this reference about three major problems with respect to getting a Special Counsel. Before the lunch break, I quoted from an article which suggested that Reno was actually against appointing a Special Counsel and therefore appointing a Special Counsel would be a major problem in the sense that she had appeared to shut the door to it.

Over the luncheon break, I had a chance to review some other articles, and I don't know whether you recall any of these. But The New York Times on January 13th, this was when the President asked Attorney General Reno to appoint a Special Counsel, and the article said this represented a change in position by the President and his wife, which is quite true and was known at the time. As we discussed earlier, they were against it, Mrs. Clinton, because she didn't think any wrongdoing had occurred, which would be the basis for the appointment of the Special Counsel. This article say:

Ms. Reno said tonight she would reluctantly comply with the President's request. For weeks Ms. Reno has argued that any counsel she appointed would not appear to be entirely independent and that she would prefer to wait until Congress revived a law that would allow her to ask a court to choose a counsel. A bill to put the law back on the books is now in Congress.

Now just by way of background on this, in The Washington Post on January 3rd, there was an article, and I'm just going to quote from it. It is referring to Senate Minority Leader Robert Dole:

Appearing on NBC's Meet the Press, Dole accused Reno of "dragging her feet" on appointment of an Independent Counsel. "It's high time that she did what she knows she should do," Dole said.

Dole, angry at a lengthy investigation of the Iran-Contra affair during the Reagan Administration, has led a GOP effort on Capitol Hill to block reinstatement of the post-Watergate law providing for court appointment of Independent Counsel to investigate wrongdoing by high-level Government officials.

Without the law, Dole said on Sunday, Reno could use her authority as Attorney General to appoint an outside counsel to handle the case, which is being investigated by career Government employees.

When a similar proposal was made by Representative Jim Leach, R-Iowa, Ranking Minority Member of the House Banking Committee, Justice Department spokesman Carl Stern said anyone Reno appointed would be under her supervision and influence rather than serving independently by court appointment as the law intended. Unlike Dole, Reno supports restoration of the Independent Counsel law, which was approved late last year by the Senate and is slated for consideration this year by the House.

This is in The New York Times on January 8th. The other was at the beginning of that week. That was in The Washington Post on January 3rd, the quote I just read.

So, this reported an appearance on Meet the Press on Sunday, January 2nd. That's the report that makes the point that when a similar proposal was made by Representative Leach, Ranking Minority Member of the House Banking Committee, which had been done earlier, Justice Department spokesman Carl Stern said anyone Reno would appoint would be under her supervision and influence. So, she had expressed that reservation.

Your first meeting here I think is January 4th, on these notes?

Mr. GEARAN. That's what my notes are dated, yes.

Senator SARBANES. This other story says:

Bob Dole, the Senate Minority Leader, again urged Attorney General Janet Reno to appoint an Independent Counsel. Ms. Reno said on Thursday that anyone she named would be vulnerable to accusations that they were not truly independent because they owe their jobs to her and the Justice Department.

And then Dole listed some names and said:

If you appointed a Special Counsel person with reputation for integrity and competence, there will be no second guessing of the Special Counsel's investigation, Mr. Dole wrote to Ms. Reno. Through her spokesman, the Attorney General today reiterated her opposition to that approach.

Having read all of this and knowing that this was the context in which you were operating at the time, it seems to me that this, your notes here are subject to the reasonable interpretation that in terms of appointing a Special Counsel that a perception is that the Attorney General didn't want to do that, "Reno has shut the door." Is that not a possible reasonable interpretation of those notes?

Mr. GEARAN. Senator, I think that is a possible interpretation. I have not had the benefit of reviewing the clips of the contacts in this time. I have tried, to this Committee, to testify accurately to what I recalled at the time. I cannot tell you that I have any more recollection—other than what I testified to.

Senator SARBANES. In the end, the President asked the Attorney General to appoint a Special Counsel; is that correct?

Mr. GEARAN. That's correct.

Senator SARBANES. In The Times of January 13th they say:

Ms. Reno said tonight that she would reluctantly comply with the President's request. For weeks Ms. Reno has argued that any counsel she appointed would not appear to be entirely independent and that she would prefer to wait until Congress revived a law that would allow her to ask a court to choose a counsel, a bill to put the law back on the books is now in Congress.

That law came along much later, as we know, and I take it at the time there was a tremendous amount of press uproar and inquiry about this matter; is that correct?

Mr. GEARAN. There was a sizable amount, editorials, Congressional calls for an Independent or Special Counsel. As I testified, the drumbeat in the press was quite significant.

Senator SARBANES. Thank you very much.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Mr. Gearan, before the Committee starts, I just want to say something, and I might be alone in this, but I don't think I am. We have gone through dates and zigs and zags and who did and who didn't. But the truth of it is I am disturbed about the delay in getting the documents and the redactions. Now this week, 14 days before these hearings were supposed to end, we come up with 21 new pages of documents—brand-new and very pertinent. We had 3 pages of whatever last week.

This is the type of thing that has gone on from the beginning here, from the very beginning. I have said it with similes or whatever, that however you want to approach it, getting information out of the White House has just been pick, pick, pick, pick, pick and we finally get something.

I think that we need to revisit the scope of the document request. If somebody is having trouble telling us the truth and getting the document or dancing behind a gossamer facade that this didn't come and that really wasn't under it, then maybe we need to broaden the scope.

But I think Mr. Chertoff and whoever, there is enough of this, and if we are going on with the hearings, we need to make the scope broad enough and the request clear enough that there isn't anybody who can misunderstand what we are asking for and what we want. I am tired of 3 today, 21, a little of this, a little of that, and I think we need to change it.

Mr. GEARAN. Senator, if I might, to your point on the redactions, I don't know if you wanted to cover that, Senator. My understanding, and I believe it is in my deposition, I think on page 82, my understanding is that the Republican and the Democratic Counsels have met on this. I would be happy to testify on any materials that this Committee has. My understanding is that has been worked out by your respective Counsels.

Senator FAIRCLOTH. We ultimately work out everything. But when you were at the White House, you segregated your White-water documents in the summer of 1994 when the Committee began looking at these matters; is that correct?

Mr. GEARAN. Actually, Senator, I believe I started it when Mr. Fiske's subpoena first started this process.

Senator FAIRCLOTH. Who decided that the notes we have now were not relevant to the Committee?

Mr. GEARAN. At what—

Senator FAIRCLOTH. Who decided the notes we got?

Mr. GEARAN. My understanding, Senator, is the previous request for information, as Senator Sarbanes mentioned earlier, was notes regarding Treasury contacts and the death of Vincent Foster, the Deputy White House Counsel.

Senator FAIRCLOTH. Let me ask you a question. Did you and your attorney or did Lloyd Cutler decide they were not relevant and should be held back? Who made the decision?

Mr. GEARAN. While I was at the White House, White House Counsel sent memoranda describing Congressional requests and subpoenas to me and responsive documents were provided to White House Counsel for their review and production.

Senator FAIRCLOTH. Was Mr. Cutler involved in the review of what should come out and what should not come out?

Mr. GEARAN. I don't believe so. I am only aware from my own part, Senator. I am not sure.

Senator FAIRCLOTH. Did you ever discuss the release of your documents, your notes with Mr. Cutler?

Mr. GEARAN. No. It was my production responsibility.

Senator FAIRCLOTH. In your presence, sir, did you ever hear the First Lady state that she did not want someone poking into 20 years of public life? Did you ever hear her make that statement?

Mr. GEARAN. I don't recall that, Senator.

Senator FAIRCLOTH. Have you heard that she made the statement? Have you heard that she had made that statement, whether you heard it or not?

Mr. GEARAN. I guess it has a vague recollection. I don't know if she said that at a press conference. I am not sure what you are referring to.

Senator FAIRCLOTH. Well, I am really referring to what Maggie Williams said. Did you ever hear the First Lady say anything that the issue was paralyzing the White House and whether or not we had a Special Counsel, it was a major issue whether we got a Special Counsel or not and that it was paralyzing the White House. Did you ever hear such conversations?

Mr. GEARAN. Well, there was considerable discussion, Senator, the first week in January whether or not the President should call for a Special Counsel. It had been a significant issue in the press, as I mentioned, with two of the Nation's leading newspapers editorializing. It was a very significant public issue, that's correct.

Senator FAIRCLOTH. Mr. Altman's diary showed that Maggie Williams said, "The White House was trying to negotiate the scope of the Independent Counsel with Ms. Reno and having enormous difficulty." All of the meetings and things we are hearing here suggest that this was a pretty accurate reflection of what was going on at the White House. My question is: Why was the White House involved in the scope? Why was it even being discussed whether a Special Counsel should be appointed? Wasn't that the sole discretion of the Attorney General—

Mr. GEARAN. Senator—

Senator FAIRCLOTH. —and not the White House? It is my understanding that would have been the sole decision of Ms. Reno and not the White House.

Mr. GEARAN. Unless the President requested it, which he did. But Senator, I guess to be most responsive to your question, what we were dealing with in our meetings was how to handle the significant press interest and questioning that was associated with the calls for Independent Counsel, what would the White House response be, what was the White House effort at that point.

As I have tried to testify, the meetings that week both took the terms of that internal debate as well as the strategy that the White House was going to do to produce chronologies and questions and answers and related information.

Senator FAIRCLOTH. It seems that there was a total failure there to make the distinction between Ms. Reno's authority to either appoint or not appoint and the scope of what would be that you-all were discussing pretty freely, negotiating what would be and negotiating with Ms. Reno; is that right?

Mr. GEARAN. No, Senator. I never heard of any negotiations with the Attorney General in that regard. What we were discussing was what are the pros and cons of a Special Counsel and what would the White House response be. If we were not going—if the President was not going to be calling for a Special Counsel, what would the reasons be that would be stated why the President did not feel a Special Counsel was warranted.

Senator FAIRCLOTH. Did you ever hear anyone mention, Mr. Nussbaum especially, that he had talked to the Attorney General about the issue and the appointment of Special Counsel?

Mr. GEARAN. No, I do not recall that, Senator.

Senator FAIRCLOTH. Did anyone mention having talked to Webb Hubbell about it?

Mr. GEARAN. No, I do not recall that, Senator.

Senator FAIRCLOTH. Did anyone go to Little Rock to visit Beverly Bassett Schaffer as a result of these meetings? It was discussed. Did you ever send anybody?

Mr. GEARAN. Not to my knowledge, Senator.

Senator FAIRCLOTH. But you talked about sending somebody to talk to her?

Mr. GEARAN. My notes reflect there was a suggestion or a reference to that, of someone going to Little Rock.

Senator FAIRCLOTH. I guess my point is why would you even think about sending somebody to Little Rock to talk to Ms. Schaffer when Donald Mackay from the Justice Department was out there investigating the entire thing? Would that not have appeared a little strange to you, that while the Justice Department had people on the job that you were even thinking about sending somebody out to maybe change testimony or whatever with Ms. Schaffer?

Mr. GEARAN. First of all, Senator, I'm not sure whose suggestion that was. My notes don't reflect it. But it was also dismissed, as my notes show, in Mr. Ickes' reference. I guess what I could explain to you is that there was a very significant interest on the part of the White House that if we were to state anything or represent what Ms. Schaffer had previously said, that it would be paramount that we not misstate it. In order to get the facts straight, in order to get our ducks in a row about what was factually the case on this matter, we needed the kind of information that the chronology and the study of Arkansas banking law and the suggestion on the independent panel of regulators was referencing, I believe.

Senator FAIRCLOTH. But did anybody bring up the fact that if Mr. Ickes' suggestion was followed and White House aides went to Little Rock to visit with Ms. Schaffer, that that could be considered an obstruction of justice?

Mr. GEARAN. Senator, I am not sure it was Mr. Ickes' suggestion, just for clarification. But there was never any instance or suggestion that this would be for anything but to get the information available to the White House so we would not mislead the press in any of the materials we would put out. That was the context of the meetings, as best I recall.

Senator FAIRCLOTH. Well, I remember a considerable time ago, in fact, it was before Whitewater became—it was just beginning to be heard about, and I mentioned to Ms. Reno that we were hearing a lot in the press and seeing a lot of things. I think she was before the Banking Committee at another hearing and I asked her, and she very quickly told me that she had the top people in the country from the Justice Department investigating it, and she would do a thorough investigation herself and no one else need be involved and the buck stopped with her. That was a considerable time ago, I think.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Gearan, let's go back to this issue with Ms. Beverly Bassett Schaffer. You will agree with me that as of January 7, 1994, you understood and everybody in that meeting, so far

as you were concerned, understood that there was an active Grand Jury investigation going on that touched upon Madison and White-water; correct?

Mr. GEARAN. Yes, that the Department of Justice was conducting that, yes.

Mr. CHERTOFF. And in the context of the discussion on the 7th, there was a specific reference to boxes going to some prosecutorial authority; correct?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. There was discussion about the possibility of an Independent Counsel being appointed; correct?

Mr. GEARAN. Correct.

Mr. CHERTOFF. Now bearing that in mind, the discussion then turned to Beverly Bassett Schaffer, and Mr. Ickes—this is on page S20576—says, "is so F---ing important." Why was she so "F---ing important?"

Mr. GEARAN. Well, I guess I would say that because the centerpiece of what an awful lot of the press interest was at that time and the issue was, as it is alluded to on the previous page, is that Madison Guaranty not getting special treatment is most important thing to prove next week. That was the issue in large part of what an awful lot of the stories were swirling around, as best I can recall, for that period. Her comments that my understanding were previously in the press is that she had stated there was no preferred treatment of Madison Guaranty.

Mr. CHERTOFF. So before this meeting, you were already aware of public statements by her about this issue?

Mr. GEARAN. I suspect that I was aware that she had made those statements previously. I was not—

Mr. CHERTOFF. Didn't Senator Dodd ask you about 2 hours ago and you answered yes, that you understood she had made some public statements earlier?

Mr. GEARAN. Yes, but I don't present myself as an expert on all those statements that she had made during 1992.

Mr. CHERTOFF. I don't want you to be an expert on all her statements. I want to ask you directly and simply. As of this meeting did you understand that she had already made a public statement or public statements about this whole issue?

Mr. GEARAN. It was my understanding that she had said that there was no preferred treatment of Madison Guaranty.

Mr. CHERTOFF. Where had she said it?

Mr. GEARAN. My understanding it was in the public domain. I don't know what publication.

Mr. CHERTOFF. But what additional information did you need from her?

Mr. GEARAN. Mr. Chertoff, it was an interest that we had, and again, I—

Mr. CHERTOFF. No, no, no. Please answer my question, not the question you want me to ask but my question. Given that she had made statements in the public domain, what did you need from her? What more information did you need?

Mr. GEARAN. We needed to make sure that everything I think as I have tried to say, is that everything, if we were to restate what Ms. Bassett Schaffer had said, that we would be accurate.

Mr. CHERTOFF. Why couldn't you just Xerox what she had said publicly and send it out?

Mr. GEARAN. That could have been one level. The second level was that we needed to make sure that whatever she did as a regulator, that was actually in accord with what should have been done.

Mr. CHERTOFF. So there was discussion about what you would do if it turned out that it was not in accord with what should have been done?

Mr. GEARAN. No. I think it was just a discussion, as the notes reflect, that we should have clear in our minds based on other independent attorneys or experts in Arkansas banking law, that we are quite well aware of what was done so that there would be no misstatement on the part of the White House.

Mr. CHERTOFF. But that's independent attorneys and other people. We are talking about why you have to go to her to get her statements when her statements have already been made in the public record. What more do you need to talk to her about?

Mr. GEARAN. Again, I don't recall a protracted discussion on this other than the import of it was to make sure we would not misstate Ms. Bassett Schaffer's position.

Mr. CHERTOFF. The import was if we "F this up, we are done." That suggests it wasn't really a casual aside but something that Mr. Ickes focused everybody's attention on.

Now, you understand you are dealing in the world of Grand Jury subpoenas where whatever your press concerns are, contacts with a potential witness are like radioactive. That is very serious business to talk to a witness when there is a Grand Jury investigation.

Mr. BEN-VENISTE. That is nonsense.

Mr. CHERTOFF. What was the reason it was necessary to go to Beverly Bassett Schaffer to talk about what she would say when she had already said it publicly?

Mr. GEARAN. Again, Senator, the best as I can recall, it was to make sure that we would not misstate anything, and I would read this as what I think this means is if we would in any way misrepresent the facts in this, that once again, White House credibility would be at stake.

Mr. CHERTOFF. I have one last question.

The CHAIRMAN. We have gone over—I will ask the Minority to indulge me. One of our Members has a question and needs to leave. With that understanding, I would ask that we yield to Senator Faircloth.

Senator FAIRCLOTH. Mr. Gearan, practically every answer we get is euphemised or polished, but very clearly from the notes, Mr. Ickes said—do you have a copy of that?

Mr. GEARAN. Yes.

Senator FAIRCLOTH. This is not soft language. This is flat. "We can't send PB, BL, or MW. It will come out." If you are afraid something is going to come out, you aren't dealing in a legitimate operation. I mean, there is no reason for it not to be out. "Item by item make sure her story is OK." Now, he isn't saying make sure it fits the press story. He is saying make sure it is OK, it fits what we want.

Jack Quinn, the current White House Counsel, says, we must keep it at "arm's length." Who will we send, "Tisdale in Lindsey

firm. Skip, WH, pass. PB friend New York lawyer." In other words, who can we send out there and we won't get caught. That is clearly the implication of this. When you knew that Mr. Mackay from the Justice Department was out there already investigating and had talked to Ms. Schaffer and had talked to these people and you-all were clearly planning to go out and that is nothing less than interfere with a Justice Department investigation. I don't think any other inference can be made.

Mr. GEARAN. Senator, the best I can do is provide you with my best understanding of having been at the meeting, and I would read this as consonant with the time where we were trying to make sure there were network stories about the White House credibility and how we had handled this issue, that we make sure, item by item to make sure that the story, the facts that the White House was going to be presented was indeed accurate.

That is my recollection, both of the substance, given that the strategy that the White House was going to embark upon, which was to have op ed pieces and chronologies and question and answers out there, that we make sure, that we do our very level best to make sure any information we were reporting or presenting to members of the press was accurate.

Senator FAIRCLOTH. We will end this so the Minority can get on. But you were not talking about the press here. "PB, BL, MW, we can't send them. It will come out." If you were dealing with a legitimate, clean operation, why not let it come out? What difference does it make? You were merely trying to get the facts to the press. If that's what you were after, why not send somebody, PB, BL, or MW, what difference does it make? Why did you have to keep it at arm's length, as Mr. Quinn suggested? Why would you need a New York lawyer or a PB friend? Why not send PB and let PB go and get off the airplane and say this is what I am here for to make sure that the facts are straight? No, that's not what you had in mind or you would have sent PB.

I thank you, Mr. Chairman.

Mr. GEARAN. If I might, Senator, I think I would read that and think that means that it would be a White House overreaction to this if the White House was to dispatch people, that it could be lending credence to circumstances and it would be an overreaction. We were very much aware of the issue of how the White House was handling this, because it was called into question by the national media. Before we embarked upon anything that would once again revisit how the White House had handled it, I think the tenor of the meeting, my best recollection, that was what we were talking about.

The CHAIRMAN. I'm going to call upon Senator Sarbanes or Mr. Ben-Veniste, but given your notes and the warnings about getting on top of this and you better otherwise we blow up, your explanation is rather strained, Mr. Gearan.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to put on the record a letter that was sent to the Committee by David Enzel, the Special Counsel of the Office of Thrift Supervision. I want to quote from it briefly.

Yesterday, Steven Parr, an examiner in the Little Rock Field Office of the Office of Thrift Supervision, found some additional documents relating to Madison Guaranty Savings & Loan Association and promptly forwarded them to me. They included status reports relating to "problem institutions" from the 1984 to 1986 period. Mr. Parr was searching for a folder on investment securities and found the documents in a box primarily containing non-institution specific examination information.

So then those documents were sent along, and Mr. Parr in his explanation for it, and I put this on the record because no big to-do was made about this matter with Mr. Parr or Mr. Enzel. I don't think any big to-do should have been made about it, because I think it is quite possible that relevant documents can be overlooked or that you can have an inadvertence which produces problems in producing them.

But what Parr said in his memo to Enzel is, he says:

As I informed you earlier today over the telephone, I found some additional documents this morning in the Little Rock Field Office relative to Madison Guaranty Savings & Loan Association.

And he details what those documents were. Then he says:

I sincerely apologize for any inconvenience or embarrassment the late discovery of these documents may cause you and/or others at the Office of Thrift Supervision and/or Department of the Treasury. I found the documents while searching for a folder on investment securities. The documents were previously overlooked in searches of the Little Rock field office for Madison Guaranty-related documents due to my failure to search or diligently search a cardboard file folder box located in my office. By far, the vast majority of the contents in the box relate to general examination information and topics instead of to a specific institution or institutions.

I would like to include both the letter from Enzel to the Committee and the memo of Parr to Enzel with respect to turning up these documents in the Committee record.

The CHAIRMAN. I would like to have a copy. I don't know whether I have seen it before.

Senator SARBANES. The letter I am quoting from went to Mr. Giuffra. I yield to Mr. Ben-Veniste.

The CHAIRMAN. I think, Senator, documents that turned up and were found in a box by an RTC employee who had little, if any, connection with them other than to inherit them is a far different situation than when a witness produces his notes of meetings that he attended and testified about and comes forth with this information to the Committee, now but not before. I think it is a big distinction. That's a big distinction. I don't see any similarity.

I will still put back 2 additional minutes. Certainly we will put these in the record.

Senator SARBANES. The only point I want to underscore, Mr. Chairman, we have had this issue come up previously. Mr. Gearan is not the first one who has been criticized on this production of documents. I just want to make the point it is obvious that people can overlook things. Mr. Gearan has an explanation for what happened to his documents which he offered at the beginning of his testimony here today, and I would be happy to carry him back through it again if we need to do that. So, I think it is very important that we understand that.

Mr. BEN-VENISTE. I think the point is, Mr. Gearan, that when you and your attorney, who is an experienced attorney in Washington, looked at the subpoena, you looked at your documents or you looked at the document request—I don't think it was a subpoena

then—you looked at the documents you had, you matched your documents against what is requested. And then there is a conclusion made, I take it with the advice of your counsel, as to what comes within the document request. And, quite clearly, these documents didn't come within that request, OK.

So, now the only issue is how did they fall between the cracks in terms of the subsequent request, and you have explained that at least four times, to my recollection, here today.

Mr. GEARAN. Mr. Ben-Veniste, I might request to put into the record a letter that I submitted and fax mailed to the Independent Counsel upon providing them back to the White House which details this in some form, if that would be helpful to the Committee.

Mr. BEN-VENISTE. I would please recommend its receipt.

The CHAIRMAN. We would be happy to receive that.

Mr. BEN-VENISTE. Now let me address something that Mr. Chertoff raised, because I don't think it can be left—

The CHAIRMAN. Can I ask you, what letter do you want to submit to us?

Mr. GEARAN. I was just saying, Mr. Chairman, that if it would be helpful to the Committee, there was a letter that I sent to the Independent Counsel at the time on January 31st.

The CHAIRMAN. Do you have a copy of that with you? Does your attorney?

Mr. GEARAN. I would be happy to share that with you. I have a copy here, sir.

The CHAIRMAN. Would you submit it? It will be made a part of the record. If you say you want to submit the letter, let's see the letter.

Mr. BEN-VENISTE. That's what he wanted to do.

The CHAIRMAN. No, he didn't want to do it. He was going to proceed. If we are going to make it part of the record, I would like to see it. I am going to make it part of the record, but I would like to have a copy of it.

Mr. BEN-VENISTE. May I, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Mr. Gearan, let me address a matter that Mr. Chertoff raised, because I would not wish to have this record stand as it is now with respect to the question of the appropriateness of interviewing a potential witness in a case.

Now the proposition was put to you that Ms. Schaffer might have been a witness in an ongoing Grand Jury investigation. I know of no investigation that was going on at that time that would have involved Ms. Schaffer's testimony. But even if it did parties associated with defending themselves and their reputations have every right in the world to interview a witness. Any notion that this is poisonous or radioactive, as Mr. Chertoff put it, is quite clearly not the law.

What is not allowed is any attempt to influence improperly a witness in that witness' testimony. What you have said quite clearly here is that there was no effort to change the substance of Ms. Schaffer's testimony, only that you wished her to come forward again; is that correct?

Mr. GEARAN. Only that we wished to make sure we had the information correct. That was my understanding, sir.

Mr. BEN-VENISTE. Now, Ms. Schaffer had made statements to Mr. Gerth in The New York Times during the 1992 campaign. She also testified before us that because of all the media attention that descended upon her in Arkansas, she didn't want to get involved again, and indeed, in a story quite recently, February 9th of this year, Larry Margasak of the Associated Press wrote "Beverly Bassett Schaffer said in an interview Thursday that her response was 'no way I want to be drawn into the political response.' She added, 'I was sick of talking about Whitewater.'"

She has testified here and consistently said that after having been harassed, in her words, by the media during the campaign in 1992, she was quite reluctant to get reinvolved. On the other hand, it was recognized that her statements in the public domain would be important in getting this full story out. So while somebody may be reluctant, their testimony might well be quite important, indeed vital to putting to rest the notion that there was some impropriety associated with her connection in this matter.

We have had hearings over several days now looking into all aspects of her connection with Madison, and the Rose Firm's connection with Madison, and Mrs. Clinton's connection with Madison. And at the end of the day, there is not a single witness who testified here that Ms. Bassett did anything improper in connection with the Madison application that was before her.

Senator SARBANES. Can I have this letter put up on the machine, please, the one that was just provided to us by Mr. Gearan?

The CHAIRMAN. I think they are making copies now. We are in the process of doing that so we can put it up on the machine.

Mr. BEN-VENISTE. While that is happening, let me just summarize what is in these notes, because as we say, we have these notes, we have your explanation for how they were produced. Now, we have to look at the substance of them and what of importance is there contained.

There was a discussion of the appointment of an Independent Counsel, something which has been reported upon for 2 years now. The positions of the parties are set forth, the historical considerations about how Independent Counsels or Special Prosecutors have acted over the years. There is a substantial body of material from which one can draw to analyze whether Independent Counsels have been effective, have they gone beyond their mandates, have they spent too much money, taken too much time or have they, in fact, done what they were supposed to do and the results are mixed. That was discussed. The importance of Ms. Bassett, the press reaction to all of this, and how you would go forward.

Now all of that information we have now received. I don't see anything that is new or startling or particularly extraordinary about these notes. Virtually everything that is here has been dealt with previously, sometimes at length over a period of 2 years.

So when we talk about the discovery of notes, it is my view that it is the obligation of the White House to continue to produce materials that they find. There are occasions where materials may be misfiled, mislocated. That happens in virtually any big document case. You have come forward with an explanation which has been credited by Senator Hatch, the Chairman of the Judiciary Committee. It has been commented on here. I find it credible.

Senator Sarbanes.

Senator SARBANES. Mr. Gearan, do you have this letter in front of you?

Mr. GEARAN. I do, sir.

Senator SARBANES. Do you have a copy to put up on the machine?

The CHAIRMAN. I don't have a copy to put up on the machine because we are using our only copy to make more copies. We just got this several minutes ago. I will be happy to have it—

Senator SARBANES. Apparently they will have it in a moment, I'm told by staff. Do you have a copy in front of you?

Mr. GEARAN. I do.

Senator SARBANES. This was a letter sent by your counsel to the Independent Counsel dealing with this matter; right?

Mr. GEARAN. Yes.

Senator SARBANES. Let me go through this with you because I want to make sure we get these facts tied down.

As you know, Mr. Gearan left the White House and assumed the responsibilities of Peace Corps Director in September 1995. Prior to his departure, Mr. Gearan was on vacation and his files and memorabilia were packed up by his White House Communications Office staff. The bulk of this material was sent to White House Records Management, while memorabilia and personal items were sent to Mr. Gearan's Peace Corps office. All of us believed that documents relating in any way to the Whitewater or Foster investigations were sent to Records Management for inventory and safekeeping. Up to that time, we had followed a strict procedure that no documents relating to these matters were ever to be removed from the White House so that complete accountability for these documents could be maintained. The only exception was the production of a single one-page document to your office in July 1994.

So, your belief, when you went over to the Peace Corps was that any documents that pertained to the Whitewater or Foster investigations had been sent—they were over in the White House and had been sent to Records Management; is that right?

Mr. GEARAN. Yes. It was my intention that they were communications files and should remain there.

Senator SARBANES. All right.

In late October 1995, we learned of a document request to the White House as a result of newspaper stories and confirmed that the White House Counsel's Office was taking responsibility for reviewing and producing documents from the Communications Office.

That's the office you had previously headed up; is that correct?

Mr. GEARAN. That's correct, Senator.

Senator SARBANES. [Continuing:]

Because we have consistently endeavored to be punctilious about document productions, and even though we thought we no longer had access to White House Communications Office documents, Mr. Gearan checked to make sure that he had not inadvertently retained any documents potentially responsive to that request. Included in this review were the boxes of memorabilia in storage at the Peace Corps which had come over from the White House. Amid this memorabilia, Mr. Gearan discovered a box which contained the documents he believed had been left at the White House. This discovery was made on the afternoon of November 1, 1995, and on the morning of November 2, 1995, Mr. Gearan gave directions to his secretary to have these documents returned to the White House Communications Office by hand delivery. Without intent to waive the attorney-client privilege, suffice it to say that later that afternoon we confirmed Mr. Gearan's understanding that the documents had, in fact, been sent to the White House Communications Office. In contemporaneous and subsequent discussions with White House Counsel, we alerted them to these facts and were under the distinct impression that the documents had,

in fact, been received by the White House and sent to Records Management and were being reviewed in conjunction with other requests for White House documents.

You thought you had left them at the White House?

Mr. GEARAN. I did.

Senator SARBANES. As it turned out, they went over to the Peace Corps. Now when further requests were being made for documents, you did, as it were, sort of a confirmatory check and uncovered these documents and then said, "well, they ought to be sent over to the White House." And you assumed they had gone on over to the White House; is that correct?

Mr. GEARAN. That's correct.

Senator SARBANES. [Continuing:]

Last evening we called White House Counsel and in the course of that discussion we were informed that they were having some difficulty locating certain Communications Office files in the Records Management system. We offered our assistance in locating this material. We learned that, rather than being sent to the White House, Mr. Gearan's Communications Office documents remained in their original White House container in storage at the Peace Corps.

This was contrary to what you thought had been done; right?

Mr. GEARAN. That's correct.

Senator SARBANES. [Continuing:]

We, of course, have notified White House Counsel and, in order to expedite their review of these documents, sent them by courier to White House Counsel's Office this morning without reviewing them. As these documents belong to the White House and review and production of these documents is a responsibility that has been assumed by White House Counsel, we felt it appropriate to handle the documents in this manner, even though there may not be any responsive documents in the box.

Then you make this explanation to the Independent Counsel. In the end they were sent over and then, of course, the White House furnished them to the Committee. That's how we now have them.

In a way, it is unfortunate. First, they were sent over to the Peace Corps when you thought they had been left at the White House, as I understand it; is that correct?

Mr. GEARAN. That's correct, Senator.

Senator SARBANES. Second, when you thought they had been sent back to the White House, in fact, that had not happened, those instructions or understanding was not carried out. That would have been back in November; is that correct?

Mr. GEARAN. That's correct.

Senator SARBANES. And then upon this indication that they had some difficulty locating them, then a further check was made and you found they were still there and you made certain they got over there; is that correct?

Mr. GEARAN. That's correct.

Senator SARBANES. Thank you.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Thank you, very much. It is nice to get back again. Just a couple quick questions and maybe a couple comments before I yield the rest of my time back over to Mr. Chertoff.

I know comments have been made how these files got misplaced and that there is some satisfaction of the explanation that you have given in not producing the documents but I think if we look at it, it has been very selective, even though they weren't specifically requested. I don't think this has been an issue of minimal

compliance with the subpoena versus really the full cooperation that the White House has always said that they were willing to provide.

My questions are that, like I said, it has been quite selective, not full cooperation, because the subjects of these notes dealt exactly with what this investigation has considered, and that is the dealings with Madison Guaranty and all the other meetings and everything. I believe they were pertinent and although they didn't meet the letter of maybe the request, I think there could have been better cooperation despite some of that.

Also, timing is everything, that if this would have been brought out maybe before your confirmation, it might have been a different view on your appointment to head up the Peace Corps. So timing could have meant a lot to whether these notes were turned over or were not turned over.

I wanted to get back to some other questions about the notes themselves and again, as I say, that I understand you had no official request come from this Committee asking for these specific documents, but didn't you feel you had an obligation to turn over these notes, even though they weren't specific but what I feel was in the broad concept of what this Committee was looking for?

Mr. GEARAN. Senator, my understanding is that what this Committee has asked for, as best as I can describe it to you, is initially on White House-Treasury contacts and then on the death of Vincent Foster. I have tried, and I have no reason not to provide them to you, as I have tried to do and to other committees as best I can. My understanding is, that's what those requests and subpoenas were about.

Senator GRAMS. The Treasury context dealt with Madison Guaranty and Whitewater, and these notes do the same.

Mr. GEARAN. My understanding, the Treasury context dealt with the issue of the October 14th meeting. I would not have joined them that way, no, Senator.

Senator GRAMS. I still think under the big umbrella of what we are talking about is the answers we have been trying to find.

Mr. GEARAN. Senator, the best I can tell you is I have tried to comply with absolutely the letter of the law here. I have done my honest best to give you the information that this Committee has requested.

Senator GRAMS. Did anybody at the White House ask you not to turn over these notes?

Mr. GEARAN. No, Senator.

Senator GRAMS. From this meeting or any other meeting?

Mr. GEARAN. No.

Senator GRAMS. The decision basically was yours that these notes were in your file and you would make them available to the White House and let them make the decision whether they should be turned over to this Committee?

Mr. GEARAN. My decision on previous subpoenas was that they were not requested and did not fit within the ambit of that subpoena request initially on Treasury contacts, and then Vince Foster, certainly if they are appropriate to this new subpoena, I am fully willing to go through them and to provide them to you as I have done.

I regret the delay, and I regret the circumstances of this. I have tried to be forthcoming in my honesty in presenting the circumstances how that happened. I take responsibility for it.

Senator GRAMS. One other question I had and which I began my questioning today earlier with, about the mood of the meeting. I know you said the meetings were just basically to get the truth out, to try to put everything in order with the questions and answers and chronology. But as you knew, this followed by several months a meeting with the White House Counsel staff, Mr. Kendall, who is the President's private attorney and others, and it sounds more like when you read these notes of this meeting that it was nothing short of, we wouldn't say a panic mode, but there was a lot of concern about what was going on.

It wasn't just basically to sit down and get the questions and chronology straight, because when you hear things that if Beverly—if we don't get this thing done, there is going to be trouble here, the diary from Mr. Altman at the same time about White-water, that Maggie told me that HRC was paralyzed by it, we don't want people getting into 20 years of politics in Arkansas.

So, when you look at all of this, I think it is more than just a meeting to try to get your questions and answers and chronology straight. There was a lot of concern about what was going on.

Mr. GEARAN. Senator, I don't mean to minimize in any way the circumstances in the White House. We were facing, I think, considerable drumbeat, as I have said, from press stories and Congressional calls for an Independent Counsel. Absolutely, this was a considerable issue in the press and press questions and if I said the mood was just to put together individual chronologies or question and answers, what I would like to testify is certainly that's what we intended to do. Certainly the mood was such, acknowledging a considerable drumbeat and a considerable cacaphony of voices on this whole issue. It was a significant press issue at the time, absolutely, Senator.

Senator GRAMS. Again, I will raise it. If it was a great concern in January 1994, according to your statements, it wasn't on your radar screen in the middle of 1995, if I am correct in following this?

Mr. GEARAN. No, Senator. What I testified previously was that the October 14th meeting of 1994 was, as best I can remember, one of the times when it was on my radar screen, which is an inelegant way, but something I was dealing with. These meetings were at the beginning of 1995. In between my October 14th meeting and these meetings in 1995, of course, the President turned over his documents to the Justice Department and there was a continuing drumbeat of stories and attention paid to this matter.

Senator GRAMS. That's all the questions. I just have the comment that despite the fact the White House and many in the Administration had been working on this from the first days of the Clinton Administration, and yet when requests were made for documents, although it didn't fit the letter of the subpoenas, that more effort was put into not providing them than it was in providing them.

I want to thank you very much. I yield my time.

The CHAIRMAN. Mr. Chertoff.

Senator SARBANES. For the record, he misspoke on his dates. We ought to get them straight. I think the October date was 1993.

Mr. GEARAN. Yes, Senator.

Senator SARBANES. These dates were 1994. You said 1994 and 1995.

The CHAIRMAN. The record reflects that. We will note that.

Mr. CHERTOFF. I'm going to come back to this issue of the documents and, in fact, your earlier testimony. But before I do, I just want to close out the discussion of Beverly Bassett Schaffer and get you back to page 20577 of your notes. This is right after Mr. Ickes underscores for the assembled how important it is to handle this matter with Beverly Bassett Schaffer.

Now, we have already established that Beverly Bassett Schaffer had made public statements about this, and as a matter of fact, we have some evidence that she had furnished copies of those statements to Mr. Lindsey via her husband. Then the suggestion is addressed whether to send PB, Paul Begala, Bruce Lindsey, and Michael Waldman; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. Mr. Ickes says, "We can't send them because it will come out."

Mr. GEARAN. That's what my notes say.

Mr. CHERTOFF. Then the discussion becomes whether someone instead of these three could be sent who would be in effect at arm's length, and not traceable to the White House; correct?

Mr. GEARAN. That's how one could read that.

Mr. CHERTOFF. One could read anything to be anything. Isn't that what happened?

Mr. GEARAN. I don't have a firm recollection of it. That's how one could read it. It is also the case that we were also looking for people, lawyers to substantiate the substance of Arkansas law.

Mr. CHERTOFF. Are you going to tell me that Skip—that is Skip Rutherford you were looking to to substantiate the law, he wasn't a lawyer was he?

Mr. GEARAN. He is not a lawyer, that's correct.

Mr. CHERTOFF. When you have the list of "Tisdale, Skip, and PB friend New York lawyer," you are not going to tell us they were people to do legal research; right?

Mr. GEARAN. What I'm telling you, Mr. Chertoff, is I don't recall that that was specifically to send to speak with Ms. Bassett Schaffer. It could have been. I just don't recall.

Mr. CHERTOFF. The question is "We can't send Begala, Lindsey, or Waldman because it will come out." Is that right?

Mr. GEARAN. That's what Mr. Ickes said.

Mr. CHERTOFF. Then it says, "Item by item, make sure her story is OK." Let me stop here for a second, because you told us earlier that the point of this exercise in dealing with Ms. Bassett was to make sure the White House's version was correct. But it doesn't say here, "Item by item make sure our story is OK." It says, "make sure her story is OK." Now assuming she was telling the truth as of January 1, 1994, how could you conceivably need to make sure her story was OK?

Mr. GEARAN. The best that I can recall is that it was the story of both what she had said previously, so we would not misstate it. But also the factual basis of what she did as a regulator to make sure that was in compliance with any Arkansas law.

Mr. CHERTOFF. So, in other words, you had a doubt in your mind about whether, in fact, what she had done was a problem?

Mr. GEARAN. I don't recall that. I just recall an issue of the White House credibility being paramount to make sure that we are not misrepresenting anything.

Mr. CHERTOFF. But it doesn't say, Mr. Gearan, "make sure our story is OK." It says, "make sure her story is OK." You understand, you wrote those words down, right?

Mr. GEARAN. Yes, I did.

Mr. CHERTOFF. Unless you really want to torture the English language, and we had an individual here a couple years ago, Josh Steiner, who, you remember we had his diary and we got all kinds of acrobatics with it. And you understand the distinction between "make sure our story is OK" and "make sure her story is OK." You see the distinction?

Mr. GEARAN. Certainly.

Mr. CHERTOFF. Right under that, you have three people that are listed, "Tisdale, Skip, and PB friend New York lawyer." Who was that friend, by the way?

Mr. GEARAN. I don't know. I don't recall.

Mr. CHERTOFF. It wouldn't be Ms. Thomases, would it?

Mr. GEARAN. I don't recall that name listed there.

Mr. CHERTOFF. It is not listed there. I'm asking you to remember who the person was.

Mr. GEARAN. I do not recall who the person was.

Mr. CHERTOFF. Now, you are not suggesting that the three people listed under, "Item by item, make sure her story is OK" were three people who were going to do legal research; right?

Mr. GEARAN. Mr. Chertoff, I can't recall exactly.

Mr. CHERTOFF. Recall generally.

Mr. GEARAN. As I said in my deposition, one could read it, as you say, that these were people that could have gone to Arkansas to make——

Mr. CHERTOFF. Sure her story was OK?

Mr. GEARAN. To make certain that we were representing the story, make certain her story was correct. I can't give you any firm recollection that that's exactly what that means.

Mr. CHERTOFF. Mr. Rutherford and Mr. Tisdale did, in fact, contact Ms. Schaffer; right?

Mr. GEARAN. I don't know that.

Mr. CHERTOFF. That's what Ms. Schaffer indicated in her statements to AP, that she had a discussion with Mr. Rutherford and she had a discussion with Mr. Tisdale and that, in fact, Mr. Tisdale offered to put together a factual document list for her. Do you know how it is that this discussion here about Mr. Tisdale and Mr. Rutherford having contact "to make sure her story is OK" wound up having an actual effect down in Arkansas in which Mr. Rutherford and Mr. Tisdale, in fact, communicated with Ms. Schaffer?

Mr. GEARAN. I don't, sir.

Mr. CHERTOFF. Do you think that is a coincidence?

Mr. GEARAN. I don't know. I just don't have any knowledge of how that happened.

Mr. CHERTOFF. You don't think that, in fact, a decision was made to request that Mr. Tisdale and Mr. Rutherford get in touch with Ms. Schaffer to make sure her story is OK?

Mr. GEARAN. Mr. Chertoff, I just don't know the answer to that question.

Mr. CHERTOFF. You were at this meeting; right? Wasn't that decided in this meeting?

Mr. GEARAN. I have no recollection of it and my notes don't indicate it.

Mr. CHERTOFF. So you can't give us anything more than what your notes say on this, right? This is one of the areas where you can't go beyond your notes; right?

Mr. GEARAN. I do not want to misrepresent anything to the Committee of what I can honestly recollect and what I cannot.

Mr. CHERTOFF. I might direct your attention to the previous page, where if there is any doubt about the need to come to closure on this where Mr. Ickes says, "Let's not talk it to death, let's just get it done." Is that right? That is kind of a call to action, isn't it?

Mr. GEARAN. I think it sounds like something Mr. Ickes would say, yes.

Mr. CHERTOFF. Was Ms. Bassett represented by counsel, by the way, at this point in time?

Mr. GEARAN. I have no idea.

Mr. CHERTOFF. Was there any discussion about whether it was appropriate to have discussions with her directly as opposed to through some kind of an attorney?

Mr. GEARAN. I don't recall that.

Mr. CHERTOFF. Now with respect to Betsey Wright, this comment in your notes in discussion the next day—I'm sorry—later in the day, where Mr. Ickes complains that it is impossible to reopen this with Mrs. Clinton, the President can't even do it himself. You remember that conversation?

Mr. GEARAN. I cannot say I remember it in any detail beyond my notes.

Mr. CHERTOFF. It wasn't memorable to remember a conversation in which you were told by the Deputy Chief of Staff to the President that the President of the United States, himself, couldn't move the First Lady to agree to an Independent Counsel? You didn't think that was memorable?

Mr. GEARAN. I am doing the best I can to recollect this meeting from 2 years ago. I am happy to provide you the notes that I have had from that meeting. But I cannot recollect it in any great detail, no, I cannot.

Mr. CHERTOFF. Can you recollect the part where it says, "Indictments will be Betsey Wright"?

Mr. GEARAN. That part, I—

Mr. CHERTOFF. That part you recollect a little bit?

Mr. GEARAN. If I might, I can certainly recollect Mr. Nussbaum's great argumentation at the time against it. He was quite strong and quite forceful in his argumentation against an Independent Counsel. I guess what I am just trying to say to the Committee is how I would read this. I never heard any suggestion at a meeting by Mr. Nussbaum that there was any indication that he felt there

was any factual basis that Ms. Wright would be charged with something like this.

Mr. CHERTOFF. Did he suggest she would be a natural target for investigation?

Mr. GEARAN. No, I don't remember that.

Mr. CHERTOFF. You don't remember one way or the other whether he suggested she might be a target?

Mr. GEARAN. I don't recall that coming up.

Mr. CHERTOFF. But you did find it important enough to write down "Indictments will be Betsey Wright"; correct?

Mr. GEARAN. I wrote that down, that's correct.

Mr. CHERTOFF. You did that because you thought there was some significance to that?

Mr. GEARAN. I wrote it down because, as you can well see, I tend to detail a lot of what exactly people have said.

Mr. CHERTOFF. Did you know that during the same week, Ms. Wright was down in Little Rock trying to locate documents relating to Whitewater?

Mr. GEARAN. I don't believe so.

Mr. CHERTOFF. Did that come up in the meeting?

Mr. GEARAN. I don't believe so.

The CHAIRMAN. We will come back to it.

Senator Sarbanes.

Senator SARBANES. Mr. Gearan, I would like to make the observation, I think if you had said make sure our story is OK, you would—if we could put that thing back up there, page 2577. "Item by item, make sure her story is OK." Mr. Chertoff suggested to you why didn't you say, "make sure our story is OK." I would like to suggest that if that's what you had said, then you would have had a line of questioning here that someone was going to go down, and in effect take Ms. Bassett Schaffer through your story to make sure it is OK, in other words, that that would be the story line. This is one of those damned if you do and damned if you don't propositions.

From my perception, it is more straightforward that it says make sure her story is OK than if it had said make sure our story is OK, which would imply White House people were going to go down with their story and in effect peddle that and make sure it was OK.

Now, I'm beginning to think what we should do in these hearings is we ought to spend the first 10 or 15 minutes running the press accounts for the period about which we are then going to ask questions so people get some sense of what was out in the public and what was taking place and what the context of the situation was.

These meetings were held on January 4th. On January 2nd, the Minority Leader of the U.S. Senate, Bob Dole, appeared on Meet the Press. The story in The Washington Post was "Senate Minority Leader Robert Dole and House Minority Whip Newt Gingrich yesterday urged Attorney General Janet Reno to appoint an Independent Counsel to investigate any involvement by President Clinton with the failed Arkansas savings and loan" and so on.

Then it goes on to report that on Meet the Press, he accused Reno of dragging her feet on appointment of an Independent Counsel. He then went on about the Iran-Contra affair, and, of course, you had Reno resisting this appointment of a Special Counsel.

That took place on the Sunday before any of these meetings took place. Now that was not the only focus of attention on this issue that the White House was receiving, was it, at the time? Do you recall?

Mr. GEARAN. You mean beyond—

Senator SARBANES. Senator Dole's call. There was a lot of—

Mr. GEARAN. Editorial calls and—

Senator SARBANES. Other newspaper comment and so forth, was there not?

Mr. GEARAN. Yes, sir.

Senator SARBANES. In fact, it tended to reach a crescendo in those first couple weeks in January, did it not?

Mr. GEARAN. Yes, quite significant.

Senator SARBANES. In the end, the President asked the Attorney General to name a Special Counsel; is that correct?

Mr. GEARAN. That's correct.

Senator SARBANES. But that was done after a period in which Mrs. Clinton, and I take it the President, to some extent, saw no basis on which to have a Special Counsel. Their position was no wrong-doing has been done, why do we need to have a Special Counsel.

Mr. GEARAN. That's right.

Senator SARBANES. In your notes, you refer to—I forget where that was, where you say principle versus politics. Do you recall where that is?

Mr. GEARAN. I believe it is 2571, Senator.

Senator SARBANES. Yes. "Matter of principle/bad politics." Before that says, "No credible evidence. They have done enough." I take it the position of Mrs. Clinton was that there wasn't any credible evidence for such a thing. The meeting recognized that this was bad politics; is that correct?

Mr. GEARAN. Yes, it was understood that this was bad politics.

Senator SARBANES. Because of the clamor for having a Special Counsel?

Mr. GEARAN. Yes, in light of the significant clamor for it, as you say.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Gearan, I want to come back to this Beverly Bassett Schaffer situation, because there is so much on the record here and when you look at the notion that your memo may be some sort of sensational information, the smoking gun du jour in these hearings. Beverly Bassett Schaffer wrote a detailed memorandum on February 25, 1992, which is part of this record. She wrote it to Jeff Gerth of The New York Times.

Three days later, she wrote a second memorandum to Mr. Gerth, February 28, 1992, where follow-up questions were addressed. All of this material is in the public record. Beverly Bassett Schaffer has testified fully before this Committee. Her testimony is in all respects consistent with what she said back in 1992 and consistent with what each and every witness from Arkansas, from the RTC, and from the Federal Home Loan Bank Board, I might add, has said about the appropriateness of her conduct.

In October of last year, this Committee received from the White House the memo of Beverly Bassett Schaffer—dated January 19,

1994, 10 days to 2 weeks after these meetings began, regarding Madison Guaranty Savings & Loan and her connection there with a narrative statement and a very detailed chronology of events, 14 pages long. We have all of that material, Ms. Schaffer's testimony, the testimony of each and every witness who has testified about the appropriateness of her action, the memos that she wrote in 1992, the memo that she wrote in 1994, and her testimony in 1996. It is all consistent.

So, the notion that somebody has been sent to try to get her to change that, which was helpful and favorable in the first place, is a total non sequitur.

Senator SARBANES. I give back my time.

The CHAIRMAN. Mr. Gearan, because I think it is important that we have a little background on public as well as private things that were taking place in connection with this, I have asked Mr. Chertoff to examine some of this with you. Let me ask you, during this period of time, what was your title? What were you in 1993?

Mr. GEARAN. The Director of Communications.

The CHAIRMAN. Director of Communications. So, as such, you obviously follow and you have people clip out those materials and articles that are pertinent, that are important, that the President should be aware of and that the Administration should be aware of; is that correct?

Mr. GEARAN. Yes. There are people within the White House that provide a daily clip service.

The CHAIRMAN. And they give it to you?

Mr. GEARAN. It is circulated broadly in the White House, including me, yes.

The CHAIRMAN. Let's talk about what you do. You are Director of White House Communications, so you keep yourself updated. If there is a big event that may be taking place, a catastrophe, whether it is worldwide or domestic, you are on top of this. Your job is to be right on top of this?

Mr. GEARAN. I try to be, Senator.

The CHAIRMAN. Was that part of your responsibilities? Was that a major part of your responsibilities so you can respond, so you can parcel things out, so you can work with the various departments within the White House and within the Executive?

Mr. GEARAN. Yes. I guess I only hesitate, Senator, because what we had in the White House, particular spokespeople for an issue, for instance, health care or those who would be more expert in a particular area on NAFTA or some of the larger issues, we broke it up. In addition to the fact there was a press secretary who provided the daily press briefings. So, there were other pieces of this of how we divided it up.

The CHAIRMAN. But you follow the important, relevant events?

Mr. GEARAN. Yes.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Gearan, there is an editorial in The New York Times dated December 20, 1993. I think you have it before you. Along the side is a typed version of the President's handwritten note, which we still don't have a copy of. The line in the President's handwriting is next to the reference to Beverly Bassett Schaffer says, "Shortly thereafter, Governor Clinton named Beverly

Bassett Schaffer as head of the Arkansas agency charged with overseeing State-chartered savings and loans. Ms. Schaffer had once done legal work for Madison. For the next 18 months, up to the point where Federal regulators moved in, she took no significant regulatory action."

Then the President says: "This is important to be on top of. Bassett did a good job in" what appears to be "campaign on this—can she now?" Did you get a copy of the President's note?

Mr. GEARAN. I don't believe so.

Mr. CHERTOFF. Did you know that the President expressed concern about this?

Mr. GEARAN. No, I don't believe so.

Mr. CHERTOFF. Did you know the President viewed it as important?

Mr. GEARAN. I don't know.

The CHAIRMAN. How do you think these meetings of the highest officials beginning in the first week of January, came about? No one told you the President was concerned about this? Is that what you are suggesting to us?

Mr. GEARAN. I don't think there is any confusion that given what was in the public domain, everyone was concerned about it.

The CHAIRMAN. Did you see this matter?

Mr. CHERTOFF. This editorial.

Mr. GEARAN. Well, I don't believe I saw the copies of the President's—

The CHAIRMAN. Did you see the editorial?

Mr. GEARAN. I believe I would have. I don't recall it to this day. But I tried to read the editorials, certainly.

Mr. CHERTOFF. Just so you understand what the position is with respect to this, briefly, to put it in context, we have had evidence that Ms. Bassett, when she was a lawyer the year before she was appointed Commissioner who would regulate savings and loans, actually worked for Madison and actually wrote a memo to Jim Guy Tucker, who was her senior partner or her partner on the case, and told Mr. Tucker that there were some legal problems with some of Mr. McDougal's other projects relating to Madison that could even result in criminal action.

Nevertheless, a year later, she was regulating Madison, didn't recuse herself, had a conversation with Mrs. Clinton about Madison in which we learned for the first time in the last couple of months they actually discussed the substance of a proposal to have Madison issue preferred stock and then she gave the green light to develop that proposal with respect to a man, James McDougal, whom she already knew had had some difficulty complying with the law about registering and disclosing with respect to the sales of land. So, that is the picture we are dealing with with Ms. Beverly Bassett Schaffer.

Now this editorial comes out on December 20th, and then early in January, this group with Mr. Ickes starts to get busy discussing the issue of the Independent Counsel and also discussing Beverly Bassett Schaffer.

My understanding is from the very beginning, just to get this all in context, from the very first day on January 4th, it is clear that

the President and the First Lady do not want to have an Independent Counsel; right?

Mr. GEARAN. That's my recollection, yes.

Mr. CHERTOFF. The concerns expressed by Bernie Nussbaum, for example, are issues of the bad-hearted prosecutor who is going to smell out corruption and may make cases on people who are surrounding the principals, namely the President and the First Lady, or concerns about not being able to limit the scope of the investigation.

On the first page of your January 7th notes, 20575, "We cannot affect the scope of the prosecutor." The concern is that there is not an ability to somehow limit or tailor what the prosecutor is going to look at, which is, of course, consistent with Mr. Altman's diary that indicates that the White House wasn't successful in negotiating limitations on scope.

Then on the next page, we have these three major problems including the fact that "Reno has shut the door." You understand that the reference to Janet Reno shutting the door meant that she would make her own mind up about the scope of an Independent Counsel. She wasn't going to be influenced or pushed by efforts to define the scope of the Independent Counsel; correct?

Mr. GEARAN. That's how I would read it.

Mr. CHERTOFF. Then we discover, as I gather the press indicates, the pressure is mounting during the first week of January.

Mr. GEARAN. Yes.

Mr. CHERTOFF. Finally, if I am not mistaken, within a day or so before the President finally wrote the letter asking for an Independent Counsel, members of his own party had gone out publicly and told him he better do that, right?

Mr. GEARAN. I don't know if it was the day before, but a period of time, yes, sir.

Mr. CHERTOFF. At the same period of time, you understood from Mr. Ickes that he wasn't all that delighted with the way the Department of Justice was looking at this anyway because he viewed Carver, who was one of the guys at Justice working on this, as himself being a bad guy who was trying to F us blue; right?

Mr. GEARAN. That was my understanding.

Mr. CHERTOFF. In effect, what happened here was this, the White House is caught between the devil and the deep blue sea. They don't want to have an Independent Counsel, don't want to have someone poking through 20 years of Arkansas, don't want to have a guy who is, as you say, an unguided missile who can't be controlled. The problem they have is the Attorney General has shut the door and says she is going to make up her own mind about the scope and if they look at what Justice is doing, these guys at Justice, Ickes is annoyed because the guy there is a bad guy who is F---ing us blue and the pressure is mounting, even by members of the President's own party, to appoint an Independent Counsel. In any case, it is the Attorney General's position because she is not going to be pushed around. That is pretty much the picture, the way it was?

Mr. GEARAN. I think the drumbeat was mounting, I think the intensity of the meetings reflects that.

Mr. CHERTOFF. The intensity of the meetings reflects that as far as the White House was concerned. The last thing they wanted to have was a prosecutor looking at this that couldn't be controlled, but the truth of the matter is with the Attorney General having shut the door and with the drumbeat mounting and with Carver himself trying to F us blue, there wasn't much choice by the time the President asked for the Independent Counsel; right?

Mr. GEARAN. I think the concerns for the Independent Counsel, as I said, were, among them, the kind of—length and the time and the expense and the control.

Mr. CHERTOFF. Let me ask you this, Mr. Gearan, I want to go back to the issue of your testimony in 1994, because I think we need to take a serious look at the question of whether the first time this issue got on the radar screen with you was on October 14th, when you had the meeting you were asked about.

Now, I have read you your sworn testimony before the Senate in which you indicated before October 14, 1993, it wasn't really on the radar screen for you. That is testimony you gave in the summer of 1994. It was within 9 months of October.

Senator SARBANES. Was this at a hearing?

Mr. CHERTOFF. It was a deposition. It is page 24. It is your deposition on Saturday, July 23, 1994.

Now, I want to go to another deposition you gave. You were also examined under oath by the RTC Inspector General's office on Saturday, July 16, 1994, and they asked you the same question. On page 4, at the top of the page:

Question: When were you first made aware of the issues surrounding the Madison Guaranty Whitewater matter?

Answer: I—the first recollection I'd give would be the meeting that I attended in October.

Question: When was that?

Answer: October 14, 1993.

So, anybody, like us, for example, until a few days ago or a couple weeks ago looking at this testimony would have concluded that until October 14, 1993, you had absolutely no consciousness to speak of of Whitewater or Madison in terms of your duties at the White House. But then we get a package of documents that reveal you were rather extensively involved in discussions in September 1993, and I want to emphasize, Mr. Gearan, this sworn testimony we are looking at was given less than a year after these meetings.

So we are not talking about 11 years ago or even 2 years ago. We are talking about a matter of months. What we have is an undated package of notes starting at S20292 and going through S20310 which reflect a 2-hour meeting you had starting at 10:00 a.m. with Jeff Gerth and Bruce Lindsey in which Mr. Gerth lays out in painstaking detail allegations of misconduct made by Mr. Hale and others which you saw fit to take down in precise detail, evidencing the fact that you evidently thought it was important enough to keep a record of.

On page S20296, you learned, or make light of the fact that in "Early 1986, examiners go to Madison Guaranty, McDougal and Tucker are trying to help him with the capital of his SBIC." That's Hale, and they are trying to find someone who will buy a piece of land. You make a diagram of the money moving from Madison to

Hale to the SBIC. There's explicit discussion about the meetings that Hale claims he had with the President.

This goes on and on and on. It talks about Whitewater, it talks about Castle Grande, it talks about Madison, it talks about Hale. It is virtually a road map to everything that's now begun to emerge, which we now know. And it is really undisputed because we've compared this with Mr. Lindsey's notes which were taken at the same meeting which occurred in September 1993, 3 weeks before the October 14th meeting. And even Mr. Kravitz, the Democratic Counsel, observed, at page 26 of your deposition a few days ago, that he had read both sets of notes and they were strikingly similar, and it would be very surprising to him if these notes were two different meetings.

So we know, notwithstanding the lack of a date, that you spent hours on this before October 14th with Lindsey and Gerth. We know that on September 23rd you continued to pursue this story with respect to further questions from The Times. We know that, during the same period, your notes indicate calls with other reporters concerning this issue.

In light of the fact that all of this is going on within 3 weeks of this October 14th meeting, it is remarkable that you could give sworn testimony less than a year later saying that you were first made aware of the issues surrounding Madison Guaranty on October 14, 1993. And what makes it particularly amazing is you have admitted to us today that these notes were part of a group of documents you had segregated and you had put aside because you knew they were potentially relevant. How many documents were in this segregated group of documents?

Mr. GEARAN. I can't estimate. It was a few inches.

Mr. CHERTOFF. A few inches, a few inches of documents.

Mr. GEARAN. I think at least, yes. Clips and maybe—actually more than that.

Mr. CHERTOFF. What, six inches?

Mr. GEARAN. Probably. It was more like a file box of documents.

Mr. CHERTOFF. How much of that was news clippings and how much of that was actual notes?

Mr. GEARAN. I would—it was—I would say most of it would be news clippings or briefings, but there were notes like this that were provided.

Mr. CHERTOFF. Now it frankly defies belief that in the face of the requirement that you give sworn testimony in two separate places, before the RTC and before a Senate deposition—

Senator SARBANES. Mr. Chairman, I think Mr. Chertoff ought to ask a question and not put all these kind of legal conclusions. I mean, this thing about defying belief with respect to sworn testimony is actually Mr. Chertoff drawing conclusions. He ought not to do that. He ought to ask the witness questions. Conclusions can be drawn by others.

Mr. CHERTOFF. Mr. Gearan, did you prepare for what you knew were to be two sworn occasions of testimony by looking at the notes that related to Whitewater and Madison?

Mr. GEARAN. Mr. Chertoff, I would have, as I tried to say in my deposition, I would have placed even this later than that. Obviously, that's an erroneous recollection.

Mr. CHERTOFF. That's not my question. In preparation for what you knew would be sworn testimony on a matter of seriousness before the RTC and before the Senate, did you prepare by looking at what you've described as about yea much material, most of which was news clippings but some of which were notes? Did you look at it before you testified?

Mr. GEARAN. I prepared for the documents that were requested, which concerned White House-Treasury contacts and it was in the context of White House-Treasury contacts concerning Whitewater that I responded to the OIG's question. I prepared as best I could. Whether or not I reviewed this, or not, I don't know. A bit of the difficulty, I think, Mr. Chertoff, is these notes are not dated.

Mr. CHERTOFF. Well, the September 23rd note is dated and the other notes from the context, it certainly would have put you on notice, but you still haven't answered my question. Did you prepare by looking at your own notes relating to your involvement with Whitewater, because you are the one who volunteered that you didn't know about it before October 14th. No one put those words in your mouth; those were your words.

Mr. GEARAN. Mr. Chertoff, that would be my recollection of when I learned of the White House-Treasury contacts concerning Whitewater.

Mr. CHERTOFF. Did you prepare by looking at these notes that show your involvement in September 1993, did you prepare before you went to give your testimony?

Mr. GEARAN. To the RTC?

Mr. CHERTOFF. Or to this Committee.

Mr. GEARAN. I can't recall whether I looked at these notes or not, Mr. Chertoff. It is certainly the case that my memory would have put it there. That is my very best recollection.

Obviously, I have no reason to doubt the other notes that you have that put it in the September time period. When I've said it was on my radar screen frankly because Mr. Lindsey was the principal point of contact on Arkansas matters, I was assured that this would be taken care of.

Mr. CHERTOFF. You were the Director of Communications. Are you telling us that in a 2-hour meeting where the reporters indicate that a guy has made specific, specific allegations, and you actually draw a diagram of the way the money goes, this is on page 20297—I mean, this can't possibly be a common occurrence to have people come in and make this kind of explicit set of allegations, and you write page after page of notes, this didn't leave an impression in your mind?

Mr. GEARAN. Mr. Chertoff, I remember the meeting, I remember Mr. Gerth coming in. I guess all I can—

Mr. CHERTOFF. You do remember the meeting?

Mr. GEARAN. I remember the fact that Mr. Gerth came into the White House and we had this—I took these notes.

Mr. CHERTOFF. Is it your testimony that this 2-hour discussion did not leave an impression on you, was not a memorable event when you had it?

Mr. GEARAN. It would be my testimony that because Mr. Lindsey was there, because he was the knowledgeable Arkansas point of contact within the White House, and because I did not see any per-

ceptible concern on his part, nor was that remarked to me later, and I knew that he would be the appropriate person within the White House to follow up on it, that's—

Mr. CHERTOFF. You weren't concerned about detailed allegations involving Madison and Whitewater by New York Times reporters indicating they had detailed allegations of involvement and misconduct concerning Madison and Whitewater? You didn't see this as a matter to concern you as Director of Communications?

Mr. GEARAN. Well, I guess in tandem with the Engelberg document where Mr. Lindsey informed me that the President had had no recollection of those meetings, and that the story wasn't written—

Mr. CHERTOFF. Is that what he said? This is in response to what is frankly a very strong accusation. The response to take that you got was—and I take it this is what you got related to you by Mr. Lindsey and you had a reason to be accurate about it—on September 23rd, the response to this very strong and serious allegation by Hale is, about these meetings is simply "No recollection, doesn't believe it happened." That was it?

Mr. GEARAN. Those are my notes, yes; that's all I wrote down.

Mr. CHERTOFF. You didn't feel a little unsatisfied by that as a resounding denial of a serious accusation?

Mr. GEARAN. I guess Mr. Chertoff, because I knew Mr. Lindsey would be quite knowledgeable about it, and if this is the response from the President, given his department or his—he did not seem particularly agitated about it afterwards, that accounts for my recollection perhaps.

The CHAIRMAN. We've gone over our time. We'll come back.

Senator SARBANES. Mr. Gearan, I listened to Mr. Chertoff very closely. You don't deny that a meeting took place between you and Mr. Gerth and Mr. Lindsey, do you?

Mr. GEARAN. No, sir.

Senator SARBANES. You have been very clear in stating that that's the case; right?

Mr. GEARAN. Yes, and these are my notes.

Senator SARBANES. You have notes of that meeting?

Mr. GEARAN. I do.

Senator SARBANES. And those are undated notes?

Mr. GEARAN. They are.

Senator SARBANES. It was your impression, I take it, that meeting took place after October 14th? Or at least when you were asked this question, you didn't slug that meeting in ahead of it?

Mr. GEARAN. I didn't, but I have no reason to dispute it certainly now, but that would have been where I had placed it.

Senator SARBANES. Right. In fact, what you said is that this was one of the first contacts, I thought, references that I can recall for Whitewater. Now where they are trying to hang you up on that here—I am not quite clear why we are in this gotcha game but in any event—your recollection, if you had been asked without the other material we have that pinpoints the meeting, was that it occurred later in time; is that correct?

Mr. GEARAN. That would be my recollection.

Senator SARBANES. Do you recall when Gerth wrote his article?

Mr. GEARAN. I believe it was the beginning of November.

Senator SARBANES. Yes. If I told you it was November 2nd or 3rd, does that sound about right to you?

Mr. GEARAN. That sounds about right.

Senator SARBANES. So the article that sort of came out of all of this came at the beginning of November. Now when you made the statements, you thought you were trying to give your best recollection; is that correct?

Mr. GEARAN. Yes, sir.

Senator SARBANES. Now confronted with the Committee's assertion that we have other material that indicated this meeting with Gerth, you, and Lindsey took place earlier, you don't contest that?

Mr. GEARAN. No, certainly not. My understanding—

Senator SARBANES. I take it from your testimony here today you accept that?

Mr. GEARAN. I do and I have no reason to dispute that.

Senator SARBANES. Right. Mr. Ben-Veniste.

Mr. BEN-VENISTE. The meeting with Mr. Gerth was a meeting where he was providing information to you that he had obtained, not under oath, but from somebody who was seeking, at that time, to be given favorable treatment by prosecutors down in Arkansas, Mr. Hale; correct?

Mr. GEARAN. Yes.

Mr. BEN-VENISTE. That was the source of Mr. Gerth's information. Then he wrote a newspaper story in which he included much, if not all, of that information; correct? That was in November.

Mr. GEARAN. Correct.

Mr. BEN-VENISTE. So when we look at the importance of all of this, whether you remembered precisely whether the meeting was before October 14th or after, it doesn't make a bit of difference, does it? Other than the fact that you've given testimony where you said you thought the October 14th meeting was before, but in fact, now it's after?

Mr. GEARAN. Which I do not dispute.

Mr. BEN-VENISTE. It was not a meeting of a clandestine nature with some conspirator who was going to do something, it was with a New York Times reporter?

Mr. GEARAN. Correct.

Mr. BEN-VENISTE. Who then wrote a story?

Mr. GEARAN. Correct.

Mr. BEN-VENISTE. And all you wrote down is what he was telling you, not that it was true or false, you wanted to be accurate as far as what he was saying; correct?

Mr. GEARAN. Correct.

Mr. BEN-VENISTE. So now let's look at the big picture for a second, and get away from the game of gotcha and off the capillaries, to the heart of the matter. What was your role? What were you supposed to do?

Mr. GEARAN. Well, at that time, I sat in on the meeting, and as I said, those are my notes. I understood that Mr. Lindsey, as I said, was the principal point of contact on Arkansas-related matters.

If there are questions here, as the back of the memo or the Gerth notes outline, as well as the Engelberg call, I would go to Mr. Lindsey. Increasingly, as the Whitewater stories proceeded in the fall, Mr. Lindsey took more and more of the calls himself, and be-

came the Whitewater spokesperson, if you will, increasingly for that, because of the complexity of the issue and the names, people, and places that I was frankly very unfamiliar with.

So, at this point in time, I was in some instances, as other notes that I've provided show, taking down the questions from reporters, but it would be my practice to report this to Mr. Lindsey who would either call back himself, or they would increasingly tend to call him.

Mr. BEN-VENISTE. Now other than acting as a funnel for information between the news reporters and Mr. Lindsey and back, did you direct anybody to go to Arkansas to do anything?

Mr. GEARAN. No.

Mr. BEN-VENISTE. Did you direct some independent fact-finding to be done?

Mr. GEARAN. No.

Mr. BEN-VENISTE. Did you set out as an investigative reporter within the White House to begin interviewing people?

Mr. GEARAN. No, I did not.

Mr. BEN-VENISTE. So, if I understand your role here, it was in a very limited capacity for a limited period of time until Mr. Lindsey took over completely to field questions from the press and get back to them?

Mr. GEARAN. That's correct. I did not take it upon myself to school myself in the details of Whitewater. I did not think that was the best use of my time, and that I should be doing other things. And because Mr. Lindsey, frankly, was so knowledgeable about Arkansas, I thought that was the appropriate course to follow.

Mr. BEN-VENISTE. I know you have been here for many, many hours already today. I know it's hard to sit here and answer questions for such an extended period of time, and I commend you for your patience and your attention to these matters.

The question has been raised about what it meant when it was said that the Attorney General had closed the door. I had referred to several articles that had already appeared that said that Ms. Reno had stated publicly, privately, in every which way but Sunday, that she did not want to appoint a Special Counsel. Does this reference to "closed the door" when you were listing reasons against a Special Counsel, in your mind, refer to the fact that apparently Ms. Reno had "closed the door" on the appointment of a Special Counsel?

Mr. GEARAN. Mr. Ben-Veniste, I think that could be a read of my notes. I cannot tell you that I recollect it any further with the benefit of those articles that you read to me. Those are notes from Mr. Ickes. I know you have indicated that you will be asking him this, I want to just report to you as completely as I can what I remember. And I can't amplify beyond what I've done, sir.

Mr. BEN-VENISTE. Thereafter, despite Ms. Reno's very public statements about her position, which was eventually borne out by the facts, when Mr. Fiske was replaced by Mr. Starr despite the fact that Mr. Fiske is so highly respected, you then see a situation where Ms. Reno, at the request of the President, goes forward and does, in fact, appoint a Special Counsel; correct?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. And all of this happens within a 2-week period of time, from the time of your notes to the appointment of a Special Counsel?

Mr. GEARAN. Right.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. You were asked the question, Mr. Gearan, about why these issues are important. With respect to this issue of the desire of the White House, the concern about Mr. Ickes and Mr. Nussbaum, about controlling investigations, of course you were aware that ultimately the Attorney General's decision was for her to make? She couldn't be told to do it or not to do it; right?

Mr. GEARAN. That's my understanding.

Mr. CHERTOFF. And of more importance perhaps she couldn't be told to limit the scope because it was her discretion and her independence that would lead her to make that decision; right?

Mr. GEARAN. That's my understanding.

Mr. CHERTOFF. That's notwithstanding that Mr. Nussbaum had expressed concerns about control and scope in the meetings. But, I also want to make quite clear that the reference to shutting the door has to do with her making the decision on her own, and announcing it on her own; isn't that right?

Mr. GEARAN. Mr. Chertoff, again, I—that could be an interpretation. Mr. Ben-Veniste outlines another one.

Mr. CHERTOFF. When you swore under oath in your deposition a couple of days ago which interpretation did you advance?

Mr. GEARAN. Well, I had not had the opportunity to review any of the articles that were read to me. I am just trying to—

Mr. CHERTOFF. You've had the opportunity to look at your notes?

Mr. GEARAN. I did, sir.

Mr. CHERTOFF. Didn't you tell us in the deposition a couple of days ago that the interpretation—wasn't the interpretation that you adopted that the Attorney General, was going to act independently, that she hadn't decided, and that she had shut the door, and she would decide and announce it on her own?

Mr. GEARAN. That's how I could read that sentence.

Mr. CHERTOFF. That's how you read it in the deposition; right?

The CHAIRMAN. Get the deposition out.

Mr. CHERTOFF. Page 144.

The CHAIRMAN. Take a look at your deposition. We had to pull teeth to get the facts and we are going to do it. And if we have to stay here late, we will. Do you have a copy of your deposition?

Mr. GEARAN. I don't, sir.

The CHAIRMAN. Page 144.

Mr. CHERTOFF. Let's get Mr. Gearan a copy of the deposition, please, before we start. It is further up the page, it's line—

The CHAIRMAN. Let's wait until he gets to it. Do you have the page, Mr. Gearan?

Mr. GEARAN. Yes, I do.

Mr. CHERTOFF. Follow along at line 20.

Question: What did you understand Mr. Ickes to be saying by "Reno has shut the door"?

Answer: I can't recall. I guess I could read that as she will make up her own mind on this. She is an independent Attorney General. She has said that she hasn't decided, that she has shut the door, that she will decide and announce it on her own.

That's the interpretation you advanced in your deposition; right? Correct? It is right there in black and white.

Mr. GEARAN. Yes, I said I can't recall, but then I guess I could read this. That's how I guess——

Mr. CHERTOFF. And you came up with an interpretation of your own notes; right? Which talked about the fact "that she has shut the door, that she will decide and announce it on her own." Is that the answer that you gave in response to the question you were asked, yes or no?

Mr. GEARAN. From the deposition, yes. I have no reason to——

The CHAIRMAN. When was the deposition given?

Mr. GEARAN. Monday evening, sir.

The CHAIRMAN. This past Monday evening?

Mr. GEARAN. Yes.

Mr. CHERTOFF. In terms of why it is important, are you aware of the fact that within a matter of weeks after this discussion with Mr. Nussbaum and Mr. Ickes concerning controlling investigations, the issue of controlling another investigation was presented, having to do with the RTC's investigation of matters associated with Madison, and whether Roger Altman, the Deputy Treasury Secretary, would stay on and be involved in that, or whether he would recuse himself? Are you familiar with that?

Mr. GEARAN. Not in a detailed way.

Mr. CHERTOFF. Were you involved in discussions at the White House concerning the desire to control that investigation by having Mr. Altman stay in charge rather than recuse himself?

Mr. GEARAN. No, I don't recall that.

Mr. CHERTOFF. Do you see a pattern here in which it seems that Mr. Nussbaum and Mr. Ickes and others felt a strong desire to assert control over who the decisionmakers would be on investigations?

Mr. GEARAN. Mr. Chertoff, I have not seen a pattern to that in my White House time.

Mr. CHERTOFF. Do you see a problem with the White House having a desire to exert control over the people who are going to be making decisions about investigations that touch upon the President and the First Lady?

Mr. GEARAN. What I do know is the conversations we had in the White House, during this week in particular, was the matter that the Independent Counsel would not have this kind of control. That was the whole point that Mr. Nussbaum was making, that they as I have said, tended to go on and last——

Mr. CHERTOFF. And be unguided?

Mr. GEARAN. And be unguided.

Mr. CHERTOFF. Now in terms of the importance of your testimony in 1994 about the sequence of these discussions, what's important about this, Mr. Gearan, is, back in 1994, I think the Committee and the RTC were trying to get a sense of why information was coming from Treasury to the White House, and why you would have, for example, attended a meeting at which there was discussion between an official of Treasury who had access to confidential information and people in the White House.

The thrust of your testimony was that basically this whole issue was no big deal for you back in the fall, and therefore, essentially,

your involvement was almost that of a bystander. And would you agree with me that, in assessing your state of mind at that time, an awareness that you had been involved during the same time period in extended conversations with reporters where they had laid out the detailed allegations of Mr. Hale would have been of considerable value in assessing the degree of your interest in this matter?

Mr. GEARAN. Senator—I mean, Mr. Chertoff, I never joined those two things.

Mr. CHERTOFF. You didn't join——

Mr. GEARAN. For the October 14th meeting, if that's what your question is.

Mr. CHERTOFF. You didn't draw a link in your mind between the meeting on October 14th where there was discussion about Madison and Whitewater and the Rose Law Firm, and your conversation with Mr. Gerth for 2 hours where he laid out chapter and verse of Mr. Hale's allegations of the President's alleged misconduct with respect to Madison and Whitewater? Those two events were totally different to you? You didn't see any connection?

Mr. GEARAN. Well, again, I would have placed it at a different point, but aside from that, because Mr. Lindsey was the principal source of information on this, and I frankly must have taken my cues from the meeting we had with Mr. Gerth from Mr. Lindsey.

Mr. CHERTOFF. You didn't mention anything about the meeting with Gerth as having occurred either before or after the October 14th meeting, did you?

Mr. GEARAN. To?

Mr. CHERTOFF. During your testimony before the Senate or the RTC Inspector General?

Mr. GEARAN. I don't know. I haven't reviewed my transcript, but I don't recall if I did or not.

Mr. CHERTOFF. By the way, let me direct your attention to page S 20572 of your notes. I think this is January 5th, still. This is a meeting with the Vice President?

Mr. GEARAN. Mr. Chertoff, I don't know if this page is—it is seemingly an entire day kind of listed here, Vice President, a luncheon, and then p.m. meeting in the evening.

Mr. CHERTOFF. Whose handwriting is it?

Mr. GEARAN. It is my handwriting. I can't imagine that there are three different meetings or whether I was summarizing something at the end of the day.

Mr. CHERTOFF. Did you talk to the Vice President?

Mr. GEARAN. I don't recall personally talking to the Vice President about this.

Mr. CHERTOFF. Does this based on your practice in terms of your notes, which we have now spent a fair amount of time on today, is there a doubt in your mind that this records—it says at the top, "VPOTUS," that means Vice President of the United States; right?

Mr. GEARAN. That's right.

Mr. CHERTOFF. And it says 5 January; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. No one else is listed here; right?

Mr. GEARAN. No.

Mr. CHERTOFF. Then it says here, "I'll do it. I'm sure it will help. Need to dump all documents." Whose words are those?

Mr. GEARAN. I believe—well, it is my handwriting. I don't know that I am quoting what someone is telling me about the Vice President, or what he told someone. I don't recall personally speaking with the Vice President about this.

Mr. CHERTOFF. What was your understanding about who stated, "I'll do it. I'm sure it will help. Need to dump all documents."?

Mr. GEARAN. My understanding, or how I would read this, is I recall, I believe, this period of time, in our efforts to have statements made about why a Special Counsel was not needed to make the arguments about why it was not needed. There, I believe, was going to be a press event, and that might apply to the second entry, "Luncheon, no question on Whitewater," where, if I recall correctly, the Vice President said that he would do it, he would make the argument for why an Independent Counsel was not necessary or called for at this time.

I would read "I am sure it will help," that sounds to me like frankly a sarcastic joke on the part of the Vice President, that in light of the considerable drumbeat, that this would be unlikely to turn the tide of public debate on it.

Mr. CHERTOFF. What does the phrase "Need to dump all documents mean."?

Mr. GEARAN. Well, in preparing for this hearing, I observed in the materials that were—I was questioned on in my deposition, and reviewed the stories that existed on January 4th and 5th, in that period of time, where there is a question of the documents going over to the Department of Justice—that was a considerable press story at the time. The White House had said on that Sunday that they had gone to the Department of Justice.

Then the next day, the Press Secretary said well, it will take a couple of weeks, according to the press reports I reviewed from the package that I was questioned on.

Mr. CHERTOFF. What package of press reports?

Mr. GEARAN. From my deposition, the documents that were submitted, to the Committee.

My observation, in remembering now that that was a big press issue at the time, could very well be that the importance of getting all of the documents over to Justice as soon as possible.

Mr. CHERTOFF. You interpret the phrase "dump all documents" as get them over to the Department of Justice as soon as possible?

Mr. GEARAN. "Dump" would be my word obviously. I mean, getting it, turning it over or—I wouldn't—I think it can be read in the context of what was a very big press issue at the time about the White House back-and-forth on this issue.

Mr. CHERTOFF. And this is a recollection you have just come to since your deposition, based upon a review of articles?

Mr. GEARAN. Well, I was notified last Thursday and I have tried to do my best to prepare for this. Last evening, when I was looking at the submitted documents to this Committee—

Mr. CHERTOFF. You mean the notes?

Mr. GEARAN. My notes and the press articles. There is a memorandum from the Press Secretary about the different network news articles, and I was reading this. I was reminded of that very big press issue at the time, that I had frankly not remembered before.

Mr. CHERTOFF. So last night you determined that "need to dump all the documents" means that the Vice President suggested getting all the documents over to Justice as soon as possible?

Mr. GEARAN. Well, in my deposition, I said I thought it could mean that it was the Clintons have recognized the need to provide the information to the Department of Justice. That's how one could read that.

Mr. CHERTOFF. One could read anything almost anyway, and we have learned during the course of these hearings, Mr. Gearan, some people will pretty much read anything any which way. But my question to you is you came to the conclusion that this refers to getting documents over to Justice last night; is that right?

Mr. GEARAN. I am just trying to help the Committee, of how I would read my notes. I have to observe, in reading the articles last night, I was refreshed that this was a very big press issue about White House credibility, that on Monday evening, I had not had a chance to review all of those articles.

Mr. CHERTOFF. Now, Mr. Gearan, I want to go back to this issue of the documents because I am really baffled. What was the procedure when you were at the White House for responding to subpoenas or document requests from the White House for paperwork that might be in your possession? They notified you, they gave you some kind of a memo, and told you what they wanted?

Mr. GEARAN. Yes.

Mr. CHERTOFF. And you collected everything conceivably relevant in one space; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. You reviewed it to make a determination about what you thought was responsive; right?

Mr. GEARAN. With my counsel, yes.

Mr. CHERTOFF. Where did you keep this segregated material in your office?

Mr. GEARAN. In my office there is a credenza.

Mr. CHERTOFF. A particular credenza you kept this stuff in?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Did you tell the White House Counsel's Office where you were keeping this stuff?

Mr. GEARAN. I don't know that I did. I don't recall.

Mr. CHERTOFF. Did anybody from the White House Counsel's Office, which had accepted the subpoena and taken responsibility for complying with it, did they ever come by and say we would like to look at the universe of stuff that might be responsive and make our own determination?

Mr. GEARAN. I believe my counsel reviewed it with White House Counsel but I am not certain.

Mr. CHERTOFF. Your understanding is your counsel reviewed it with White House Counsel. Did White House Counsel know where you kept this stuff?

Mr. GEARAN. I don't know.

Mr. CHERTOFF. Did they ask you for a set so they could have a central file of all White House documentation that might conceivably be responsive?

Mr. GEARAN. I don't know.

Mr. CHERTOFF. I mean——

Mr. GEARAN. I don't recall that.

Mr. CHERTOFF. These notes were notes that you prepared in the course of your official duties as the White House Communications Director; right?

Mr. GEARAN. That's correct.

Mr. CHERTOFF. This isn't your personal diary——

Mr. GEARAN. No.

Mr. CHERTOFF. —of your personal stuff?

Mr. GEARAN. Right.

Mr. CHERTOFF. It is official stuff which, under the law, is supposed to be kept within the control of the White House——

Mr. GEARAN. Right.

Mr. CHERTOFF. —generically; is that right?

Mr. GEARAN. That's my understanding, yes.

Mr. CHERTOFF. What I have a hard time understanding is it is segregated, it is put in a certain area, you even think that the White House Counsel's Office may have at a point in time reviewed the documents with your counsel. How is it possible that these things leave the White House, and no one at the White House misses them, or reaches out to you, and says we need these things back?

Mr. GEARAN. I can't speak for the White House Counsel's production process, Mr. Chertoff. I do know that my office was packed, that I did not pack my office. I wish I had. And that that accounts for its inadvertent transfer.

Mr. CHERTOFF. When did your office get packed up?

Mr. GEARAN. I believe the end of August, I would assume. I was on vacation from mid-August through Labor Day and did not return to the White House.

Mr. CHERTOFF. We asked for documents relating to Whitewater, and really anything concerning the Resolution in August. Did anybody come to you at the end of August and say do you have things that are relevant to this?

Mr. GEARAN. I don't recall that, no.

Mr. CHERTOFF. On August 25th, I think, the letter went out. Did you see an August 25th letter requesting all documents relating to Whitewater and Madison?

Mr. GEARAN. On August 25th?

Mr. CHERTOFF. Yes.

Mr. GEARAN. I don't recall that, Mr. Chertoff.

Mr. CHERTOFF. Would you agree with me these notes clearly relate to Madison and Whitewater?

Mr. GEARAN. Yes.

Mr. CHERTOFF. I see my time is up.

The CHAIRMAN. We have some more to go over.

Senator SARBANES. OK, good. Mr. Gearan, your deposition, when was that done?

Mr. GEARAN. Monday evening.

Senator SARBANES. Do you recall when it began? I have here that it began at 5:30 p.m.

Mr. GEARAN. That's my understanding, yes.

Senator SARBANES. And it finished after 10:00——

Mr. GEARAN. Yes, Senator.

Senator SARBANES. —is that correct?

Mr. GEARAN. Yes.

Senator SARBANES. Did you take time out for dinner?

Mr. GEARAN. No, we did not.

Senator SARBANES. You went straight through with no dinner?

Mr. GEARAN. That's correct.

Senator SARBANES. Your counsel said at the beginning, "If I may make a brief statement. For the record, Mr. Gearan is appearing here voluntarily and on rather short notice."

And Ms. Fisher who was counsel for the Majority said, "Yes, we appreciate that very much. So thank you for being so flexible."

Your attorney then said, "The one thing I wanted to make clear is he has really not had an opportunity since he has been, shall we say, hitting the ground running at the Peace Corps since he came to have a opportunity to revisit this subject, either before or after your invitation to come down today. I do want to say at the beginning, he will endeavor to use his best efforts but to understand that we're sort of catching him with a relatively minimal amount of opportunity to refresh his recollection about the broader context of this inquiry." Do you remember that—

Mr. GEARAN. I do.

Senator SARBANES. —statement by your counsel?

Now then, Counsel took you through your notes phrase by phrase; is that correct?

Mr. GEARAN. That's correct, Senator.

Senator SARBANES. And you know, even in those instances where you said well, you didn't recall, you were then pushed to interpret what the notes meant; is that correct?

Mr. GEARAN. Well, I tried to do my best to interpret what my—how I would read my notes. I tried to note where I did not have any independent recollection of it as best as I could.

Senator SARBANES. Let's take the one on Janet Reno about which they were pressing you on that answer, you said, "I can't recall. I guess I could read that," and then you went on to state what your guess was, as to how you could read it. Now as I look at your notes, that's not the only instance when that happened; is that correct?

Mr. GEARAN. That's correct. There were probably many instances in this deposition where I was not able to fully recall the specifics of it, particularly when I was—

Senator SARBANES. Of course, interestingly enough, that answer in terms of she is an independent Attorney General is consistent, of course, with the position she took, in not wanting to name a Special Counsel?

Mr. GEARAN. Yes.

Senator SARBANES. Now, you were also asked about this meeting with Gerth, and as I recall, this was at your deposition, your testimony was that you placed it later; is that correct?

Mr. GEARAN. I would have, but I also don't dispute the fact of its apparent date in September.

Senator SARBANES. You said, "I guess the only thing I would say today is I have no reason to dispute that the meeting was in September, if the notes join those facts. I would not have placed it then."

Mr. GEARAN. I would not have.

Senator SARBANES. You go on to say, "I would not have placed it at that time line, but again, I have no reason to dispute that." And of course, that's the position you take here today as well?

Mr. GEARAN. It is.

Senator SARBANES. So it is consistent with the position you took in your deposition.

Mr. GEARAN. That's correct, sir.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Gearan, I want to explore with you this concept that your 2-hour meeting with Jeff Gerth, you didn't have any particular reaction to it; that's your testimony?

Mr. GEARAN. Well—

Mr. CHERTOFF. That didn't alarm you, you didn't feel this was a matter that you ought to be concerned about or just kind of a routine matter, was that it?

Mr. GEARAN. I guess my testimony would be that, because I did not see any evidence of Mr. Lindsey's alarm, afterwards or in those days, that I not knowing any of the names or many of the issues that Mr. Gerth outlined to us, I took my cues from Mr. Lindsey's reaction.

Mr. CHERTOFF. Do you have your document, S20292? We just got this, I guess, in the last month. And I want you to follow me and tell me, did you talk to Mr. Lindsey afterwards to gauge his reaction, or are you just going by his body language?

Mr. GEARAN. I don't recall. I would have assumed I did. But I have no recollection of any extraordinary reaction of Mr. Lindsey.

Mr. CHERTOFF. My question is did you talk to Mr. Lindsey after Gerth left, about what this was about?

Mr. GEARAN. Mr. Chertoff, I don't recall an instance, but it seems likely that I would.

Mr. CHERTOFF. Seems pretty likely you don't recall what he said about it; right?

Mr. GEARAN. I don't recall specifically what he said. No, I do not.

Mr. CHERTOFF. Let's explore whether this is the kind of material that would likely capture your attention or whether it was too obscure. It begins with a reference to "David Hale—Federal Grand Jury investigation, misuse of SBA money, about to be indicted for plea, claims pressure of people to loan, Bill Clinton, Jim Guy Tucker." Did that catch your attention?

Mr. GEARAN. Well, I don't know how much more I can add, Mr. Chertoff.

Mr. CHERTOFF. Was that the first you heard of an allegation that Mr. Clinton had been involved in pressuring someone to make an illegal loan?

Mr. GEARAN. I believe so.

Mr. CHERTOFF. And did that surprise you to hear The New York Times reporters saying they had an allegation from a specific person to that effect? Isn't your job, it is not like you were in a national security council, you were the Director of Communications. Maybe I am wrong, doesn't that mean you are in charge of communications?

Mr. GEARAN. That's what it means.

Mr. CHERTOFF. That means you have to be concerned about the image that the White House is projecting out; right?

Mr. GEARAN. Correct.

Mr. CHERTOFF. I assume you were at the meeting with Lindsey, not as a potted plant, but because he viewed you as being a necessary person to be there; right?

Mr. GEARAN. Well, I would like to think that, Mr. Chertoff.

Mr. CHERTOFF. You think he was just looking for company?

Mr. GEARAN. No. But for my own part, certainly I was grateful Mr. Lindsey was there because this was information and people and names that I was most unfamiliar with and it would be obvious I would have to look to Mr. Lindsey for handling this matter.

Mr. CHERTOFF. Did you do that? Did you look to Mr. Lindsey afterwards to explain to you and lay out what this was about?

Mr. GEARAN. Well, I do know from the follow-up questions from Mr. Engelberg, the questions that he listed in that phone message that you mentioned earlier, I would have gone to Mr. Lindsey for that information.

Mr. CHERTOFF. Here is what I do not get. For 2 years now we have heard people say that the reason it was important to get information from various law enforcement agencies was to prepare for press inquiries. You are the guy with the responsibility for supervising responses to press inquiries and making sure it happens. And yet, with respect to a 2-hour conversation with The New York Times, where they repeat detailed damaging allegations, you don't seem to be real interested in kind of putting together a memo or something that's going to enable you to respond to the press.

Mr. GEARAN. I guess, Mr. Chertoff, because of the press of other business on my plate, because of the other legislative issues that the President was working on, and NAFTA I believe was up in the fall, and other issues, that I felt the best use of my time was to work on how we can explain and communicate the President's agenda because Mr. Lindsey frankly was known within the White House as being that person to speak with, to get the information, I thought that was entirely appropriate.

Mr. CHERTOFF. But you nevertheless took copious notes.

Mr. GEARAN. I did.

Mr. CHERTOFF. Now as you move down the page, toward the bottom of that first page—

Senator SARBANES. Page 1?

Mr. CHERTOFF. Page 1. It says, "Allegation BC encouraged misuse of Government programs or at least a cover-up." At that point did a little alarm bell go off with you?

Mr. GEARAN. Mr. Chertoff, I am not sure I can add too much more than what I have testified in terms of my recollection of this, and the probable reasons for that.

Mr. CHERTOFF. Your position with us and it is very pertinent to the issue of your testimony before the Committee in 1994, that this hadn't popped up on the radar screen and was not a big deal to you. At least someone has to weigh that against this new evidence, in terms of seeing whether it kind of fits.

And if you had no notes or a page of notes on a conversation, it might be pretty easy to understand that you wouldn't consider that popping up on the radar screen, but here, given the October 14th

meeting specifically involved a discussion that there were going to be potentially criminal referrals involving Madison and Whitewater, the fact that within 3 weeks earlier you had heard there was a witness who was trying to plead—you know, reach a plea bargain by making allegations regarding Madison and Whitewater, it is hard to see how you wouldn't connect these things. And when you went on October 14th, you wouldn't immediately key into the fact that you had been hearing about this. For someone whose job is communications, this is what we are trying to figure out.

Now on page 20293, you write down——

Senator SARBANES. Is that page 2 of these notes?

Mr. CHERTOFF. Page 2 of the notes. You recount what Hale says with "Three conversations with BC." That's Bill Clinton; right?

Mr. GEARAN. Yes.

Mr. CHERTOFF. That much detail you understood; correct? Then you see on the third page, that Gerth went to Arkansas last week, 12 hours of interviews. And I take it from your experience you understood that that suggested The Times was treating this with a certain degree of seriousness; right?

Mr. GEARAN. Yes. I was certainly aware that Mr. Gerth was a respected reporter.

Mr. CHERTOFF. That would suggest to you as Communications Director, this is something you ought to start paying attention to; is that right?

Mr. GEARAN. Mr. Chertoff, again, my best recollection is derivative, I guess principally because of how Mr. Lindsey approached it.

Mr. CHERTOFF. If your view of this September meeting was that this was Lindsey's problem, why were you the one who responded to questions on September 23rd from Steve Engelberg rather than simply kicking it over to Lindsey?

Mr. GEARAN. As I said, increasingly it became that. Initially I would get the answers from him and report back to the reporters. It became increasingly clear to me, and I think to Mr. Lindsey, that it was easiest for reporters to call him directly, or he would call them back after I had outlined to him the kinds of questions that were going to be asked.

Mr. CHERTOFF. But as of the October 14th meeting with Ms. Jean Hanson from Treasury, you were still attending the meetings; right? And you were taking notes?

Mr. GEARAN. That meeting I was at briefly, yes.

Mr. CHERTOFF. Did you miss part of the meeting?

Mr. GEARAN. Yes, I did.

Mr. CHERTOFF. Then after that, your recollection is you turned it over to Lindsey?

Mr. GEARAN. My recollection is that increasingly throughout that period of time in the fall, he became the principal contact for most of the press.

Mr. CHERTOFF. See, but that doesn't fit with your earlier testimony that you believed that this long, extensive conversation with Gerth occurred after the October 14th meeting, because you have just told us your memory of that period of time was that, as time passed later into the fall, you had less and less to do with it. That's inconsistent with the statement that somehow your heavy meeting

with Gerth, your 2-hour meeting with Gerth, would have occurred later in the fall rather than earlier?

Mr. GEARAN. Let me try to explain. My belief is that at that time I—my recollection of this period of time is that, increasingly, the day-to-day press contacts and the more detailed questions that were coming in from a variety of different reporters, particularly as we moved into later in the fall, were handled by Mr. Lindsey.

It is certainly the case in the beginning part of this, I would get the answers, as I did I believe with Mr. Engelberg, and then call him, which I think I did directly and report to him my information was from Mr. Lindsey, in all of this material.

Mr. CHERTOFF. So that given your testimony here, that as time went on you were less involved, it doesn't make much sense that the biggest and most extensive meeting involving this issue would have occurred later in the fall, after October. It really only makes sense it would have occurred earlier, which is what the documents show.

Mr. GEARAN. And I have no reason, as I said, to dispute that. I'm just trying to say that when this came on my radar screen, I would not have placed it at that point. That's obviously erroneous because this meeting with Mr. Gerth was in September.

Mr. CHERTOFF. When you testified under oath twice within 9 months of these events in 1994, on each occasion, you affirmatively stated that the October 14th meeting was the first meeting; right, the first discussion?

Senator SARBANES. One of the first.

Mr. CHERTOFF. Actually I think that—

Senator SARBANES. In the testimony in the deposition to our Committee, what did he say?

Mr. CHERTOFF. I will do both of them.

One of the first contacts references you could recall, you said in the deposition to the Committee, was October 14th. It was not on your radar screen at this point in time.

You were earlier asked by the RTC IG:

Question: When were you first made aware of the issues surrounding the Madison Guaranty/Whitewater matter?

Answer: I—The first recollection I'd give would be the meeting that I attended in October.

Question: When was that?

Answer: October 14th, 1993.

That's page 4; right?

Mr. GEARAN. I have no reason to dispute—

The CHAIRMAN. Let's put it in front of you. Let's go over it slowly, each one of them. Do you see it there?

Mr. GEARAN. Yes, sir.

The CHAIRMAN. Why don't you read it. "When were you first"—start from the top question.

Mr. GEARAN. It says:

Question: When were you first made aware of the issues surrounding the Madison Guaranty/Whitewater matter?

Answer: I—the first recollection I'd give would be the meeting that I attended in October.

Answer: When was that?

Question: October 14th, 1993.

Mr. CHERTOFF. That is what you said in your testimony to the RTC?

The CHAIRMAN. Continue, go on down. How were you advised of that meeting?

Mr. GEARAN. It says:

Question: How were you advised of that meeting?

Answer: It was on my schedule that day and—to go to a meeting in Mr. Nussbaum's office.

Question: Who contacted you?

Answer: Who put it on the schedule? My assistant Steven Cohen.

Mr. CHERTOFF. Let's go back to this meeting with Jeff Gerth—Senator SARBANES. Let's do the deposition.

Mr. CHERTOFF. I think we've done the deposition.

The CHAIRMAN. Let's put the deposition up, page 24. Ready?

Mr. GEARAN. It says:

Question: You don't recall anybody in the room having any type of reaction to these inquiries at all?

Answer: No. Again for the part of the meeting that I was at, these are the notes that I took because they were questions to Treasury and about an RTC matter. This was one of the first contacts, I thought, references that I can recall for Whitewater. This was not on my radar screen, Whitewater, at this point in time. So I don't recall this meeting vividly beyond these notes in the Early Bird system.

Mr. CHERTOFF. Now let's go back to that interview with Gerth in September. Move to page 20295, you have page 2 at the top but—let's keep it in sequence, down toward the middle—

Mr. GEARAN. I'm sorry. The Bates number again is?

Mr. CHERTOFF. S20295.

Mr. GEARAN. OK.

Mr. CHERTOFF. In the middle of the page, "McDougal also told him he would run to audit in S&L had to get loans transactions out of there, asked for a list of assets." Does this ring a bell?

Mr. GEARAN. No.

Mr. CHERTOFF. Then there was a discussion of Castle Sewer and Water, Steven Smith loan to Susan McDougal. I mean, you had a very—

Senator SARBANES. What page are we reading from now?

Mr. CHERTOFF. 20295.

Senator SARBANES. Page 4?

Mr. CHERTOFF. Page 2 at the top.

The CHAIRMAN. Page 2 at the top and fourth or fifth page in, 95. Page 2 at the top.

Senator SARBANES. On page 4 of the notes.

The CHAIRMAN. Yes.

Mr. CHERTOFF. You were keeping a very detailed account of what Mr. Gerth was telling you.

Mr. GEARAN. It was certainly my practice to write down information from reporters, and the questions they would be asking the White House.

Mr. CHERTOFF. There weren't a lot of question marks and notations that you didn't understand what was going on; right?

Mr. GEARAN. Well, there may not have been but I certainly wasn't—this was all very complex to me.

Mr. CHERTOFF. Now next page, 20296, it has a little 3 at the top.

Senator SARBANES. This is page 5 of the notes?

Mr. CHERTOFF. They are not numbered sequentially otherwise, so I think the best I can do is 20296 at the bottom. In the middle of the page it says, "Early 1986, examiners go to Madison Guaranty." Now Madison Guaranty came up in your October 14th meeting with Ms. Hanson; right?

Mr. GEARAN. The question of the referrals?

Mr. CHERTOFF. Yes. You knew what Madison Guaranty was; is that right?

Mr. GEARAN. I believe I had heard about it, yes. Mr. Chertoff, I was never schooled in a lot of this detail.

Mr. CHERTOFF. But this looks to me like a schooling process. This is the problem——

Mr. GEARAN. Well, because frankly——

Mr. CHERTOFF. You were writing down what is really a compellingly lucid account of this——

Mr. GEARAN. I understand.

Mr. CHERTOFF. —which frankly would have been like a road map a year ago to all of this. And yet then 3 weeks later, you are acting as if you are completely disinterested and ignorant about this. That is why I am going through this to examine the level of detail and comprehension to the point that on the next page, you actually do a little diagram here. This is 20297. You talk about the appraisers inflating, and then you have Madison money going to Hale, puts into this SBIC, and then you have loans to entities that Madison had trouble with. I mean, we could have used this chart 3 weeks ago. It is a beautiful—not——

Senator SARBANES. Well, we had the Gerth article on November 2nd, 1993.

Mr. CHERTOFF. My point is you knew in September this was on your radar screen, you have a lengthy exposition of it——

The CHAIRMAN. I want to point out, Mr. Gearan, that on November 2, following this meeting which took some time, there was an article in some detail 2 weeks prior to your November meeting, so this was on your radar screen. Are you saying that that wasn't on your radar screen? When the article was printed—I haven't seen the November 2nd article. I may have seen it—but indeed, if Mr. Gerth, subsequent to the September meeting, published an article on November 2nd; is that right?

Mr. GEARAN. My understanding, Mr. Chairman, is that the article did not run until November.

The CHAIRMAN. November 2nd; is that right?

Mr. GEARAN. That's my understanding.

The CHAIRMAN. Yes. So if this was not a memorable occasion, given the matters and the detail that were laid before you with Mr. Lindsey, then what would be a memorable meeting?

Mr. CHERTOFF. In the course of this meeting, wasn't there even discussion about Mr. Foster's death and some question about—I want to go to page—this is toward the end, S 20309.

Senator SARBANES. 20-what?

Mr. CHERTOFF. 20309.

Senator SARBANES. What about all the pages in between?

Mr. CHERTOFF. I am going to do all the pages but this is memorable stuff. It says, "Believe VF," Vincent Foster, "was involved somehow, knowing they were—had done work for JMcD." Didn't

the fact that Mr. Foster potentially had a connection with Mr. McDougal raise a red flag for you in September, which was 2 months after Foster took his own life?

Mr. GEARAN. Mr. Chertoff, I don't know how much more I can add to this, that because of the particular meeting, and because Mr. Lindsey was in the room, and because I knew him to be knowledgeable about this, and I suspect from his——

Mr. CHERTOFF. Did you know Mr. Foster?

Mr. GEARAN. Yes, sir.

Mr. CHERTOFF. Didn't your curiosity get piqued by the thought that Mr. Foster—there was some connection between Mr. Foster and work from McDougal and The New York Times was going to be examining this or looking into this?

Mr. GEARAN. It was quite a lengthy and frankly very complicated report from Mr. Gerth, and because of its complexity and because of Mr. Lindsey's expertise, that is my recollection.

Mr. CHERTOFF. What does that say there by where it says, "Out to POTUS meeting"? What does that mean?

Mr. GEARAN. I assume I had to go to a meeting with the President and I left the meeting.

Mr. CHERTOFF. It says, "Request to see the rest of the notes." Where does that come from?

Mr. GEARAN. It is the continuation of the—I would assume the Gerth meeting, of what he is requesting.

Mr. CHERTOFF. So you went back in again?

Mr. GEARAN. That's how I would read that, yes.

Mr. CHERTOFF. When you went to see the President in between the first part of the meeting and the second part, did you say, "By the way, there is a guy in here, a reporter from The New York Times, who says there are allegations you were involved in some kind of illegal loan activity?"

Mr. GEARAN. No, I don't believe I did, no.

Mr. CHERTOFF. As you sat there in your meeting, did you wonder, I mean, having just heard pages of allegations, did you wonder, did any kind of irony strike you?

Mr. GEARAN. I don't recall that. I would not have brought it up with the President because, of course, I would have understood that would be for Mr. Lindsey to do because he was most able to understand and to ask the President these questions. I would not have understood that as my——

Mr. CHERTOFF. But then you made a point of going back in; you didn't just tail off; you actually went back into the meeting?

Mr. GEARAN. To the Gerth meeting?

Mr. CHERTOFF. Yes.

Mr. GEARAN. Yes.

Mr. CHERTOFF. If it wasn't of interest and too confusing and Mr. Lindsey was the one handling it and he didn't care, why did you go back to the meeting?

Mr. GEARAN. I understood it to be important because of The New York Times and because of this information that I was sitting on and to assist in making sure that what the particular reporter from The New York Times wanted, that we have listed as clearly as we could.

Mr. CHERTOFF. So it was important then? I am trying to figure out, it is either unimportant or it is important. Which is it?

Mr. GEARAN. Well, certainly The New York Times is important. And I think sitting down for this period of time evidences that. The question of whether it came on my so-called radar screen or not, it would not have in this period.

Mr. CHERTOFF. I'm going to continue on this issue of memorableness. I want to go back on this issue of the documents.

You told us that you, in terms of your dealings with the White House, you had taken these documents inadvertently, no one in the White House evidently was taking steps to make sure documents weren't inadvertently removed. We received a letter on February 13th, which was 2 days ago, from Ms. Sherburne. Mr. Waldman, whose name came up in your notes, wonderful to relate, on February 12th, he discovered documents in the course of an office move. Have you talked to Mr. Waldman about his recent discovery of documents in the—maybe we ought to move everybody and we will get more documents.

Mr. GEARAN. I have not talked to Mr. Waldman, no.

Mr. CHERTOFF. One of the problems—and for this I think this is not—obviously Mr. Waldman is not your responsibility. One of the problems, Mr. Gearan, is we may have to go back with you over these things, too.

The CHAIRMAN. Excuse me. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Can we put up the note of the chart which Mr. Chertoff has found so fascinating from your notes? Memorable.

Mr. Chertoff said I wish we would have had this chart last week. It is really useful. Can we put up the chart of Mr. Lindsey's notes which we have had for 4 months in this Committee? The point being that Mr. Gearan's notes, which have the same exact chart as Mr. Lindsey's, which we have had for 4 months is supposed to be some new and important information. Is there any distinction between what you have said and what Mr. Lindsey has said about what Mr. Gerth was telling you that he eventually printed 2 years ago in The New York Times?

Mr. GEARAN. I have not reviewed Mr. Lindsey's notes, but the chart looks similar.

Mr. BEN-VENISTE. The notion that here we have uncovered this nugget of important information, this chart which is so revealing of what happened which was in the newspaper story 2 years ago, the story of a man who was trying to make a deal to save his skin and who some day will testify somewhere under oath, we expect, but now your chart is the Rosetta stone for this Committee, we are led to believe. This is the important nugget of information we have waited for, because Lindsey's chart, I think, has the arrows on—the Madison and Hale on the left and you have them on the right.

Senator SARBANES. These notes were what Gerth was recounting that he had heard or found out; is that right?

Mr. GEARAN. That's right.

Senator SARBANES. Including extensive allegations that were made by David Hale. Now the very article said about Hale, "In an effort to win leniency from prosecutors on the eve of his indictment, Mr. Hale offered prosecutors information about Mr. Clinton and

other Arkansas politicians." You had no idea who Mr. Hale was, did you?

Mr. GEARAN. No.

Senator SARBANES. Did Mr. Lindsey know who Mr. Hale was?

Mr. GEARAN. I would assume—at what period of time?

Senator SARBANES. You are assuming he knew because he was from Arkansas, I take it?

Mr. GEARAN. Yes.

Senator SARBANES. So these notes are really a recounting of Mr. Hale's allegations.

Mr. GEARAN. Seemingly, as told to Mr. Gerth.

Senator SARBANES. As communicated to Gerth, or at least a large part of them; is that correct?

Mr. GEARAN. I think that is the appropriate read of these.

Senator SARBANES. And Gerth went through these things?

Mr. GEARAN. Yes. All of this information would be from Gerth.

Senator SARBANES. That was all from Mr. Gerth. Mr. Gerth was passing on what he had gotten from Mr. Hale and perhaps others.

Mr. GEARAN. And others, yes.

Senator SARBANES. Then at the end of it, Mr. Gerth left you—all with some questions; is that how it went?

Mr. GEARAN. That's how I would read this, yes, Senator.

Mr. CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Now, I take it in the course of this meeting in 1993 that the identity of a project known as Castle Grande or Castle Grande became known to you through what Mr. Gerth was telling you; right?

Mr. GEARAN. I'm sorry. What page are you on?

Mr. CHERTOFF. I'm now on 20298.

Mr. GEARAN. And your question, Mr. Chertoff?

Mr. CHERTOFF. Well, in the middle it goes "phone call from JGT ask meeting with him and BC late in day after work in JGT office, sales office for Castle Grand, 145th Street." You wrote down "Castle Grand." Is that right?

Mr. GEARAN. That's what Mr. Gerth must have told me.

Mr. CHERTOFF. That name came up during the course of the conversation; right?

Mr. GEARAN. Yes, that's what Mr. Gerth must have told me.

Mr. CHERTOFF. At the bottom it says, "1984 BC campaign debt that McDougal helped erase." It says, "Betsey Wright." What is that word after "Betsey Wright"?

Mr. GEARAN. I believe that is "confirmed."

Mr. CHERTOFF. That is the same Betsey Wright, to your knowledge, that came up in the discussion early the next year in January 1994, when Mr. Nussbaum was picking up an example of someone where there might be some indictments, right, same person?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Then the next page, 20299—

Senator SARBANES. Let's be fair here. Your testimony, as I understand it this morning, was that Mr. Nussbaum, giving extreme examples, made reference to Betsey Wright in that context; is that correct, that it was not a serious statement that she was going to be indicted?

Mr. GEARAN. I never heard any serious statement of him laying out any factual basis for Ms. Wright facing any charge.

Mr. CHERTOFF. Was there a Whitewater group actually, formally known within the White House as a Whitewater group or the Whitewater group in January 1994?

Mr. GEARAN. Well, I don't know if it was formal, but Mr. Ickes, I understood Mr. Ickes as being the point person at the beginning of January in 1994 to coordinate this effort. That's what—

Mr. CHERTOFF. Was there a group in December 1993 that formed before Mr. Ickes arrived?

Mr. GEARAN. I don't recall it. In December 1993?

Mr. CHERTOFF. Yes. Let's focus on January 1994. Mr. Ickes was the leader of the group basically?

Mr. GEARAN. He was the coordinator.

Mr. CHERTOFF. You attended meetings because you took notes?

Mr. GEARAN. I did.

Mr. CHERTOFF. Did Maggie Williams attend?

Mr. GEARAN. I don't recall Maggie Williams at those meetings.

Mr. CHERTOFF. Did Mr. Nussbaum attend?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Mr. Podesta?

Mr. GEARAN. In this period, I don't know if he was in these meetings or not.

Mr. CHERTOFF. Later he took it over?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Did Mr. Ickes used to issue memos that assigned tasks for particular people in the group?

Mr. GEARAN. I was just shown this this morning, this memo. I had not recalled this memo before.

Mr. CHERTOFF. I don't know what "this" is. What is the Bates number?

Mr. GEARAN. Your staff handed me, S20760.

Mr. CHERTOFF. 20760. This came within the last couple of days when Mr. Waldman discovered documents during his move. It is to the Whitewater group from Harold Ickes. Do you recognize this as a memorandum that was prepared by Mr. Ickes on a regular basis as part of his responsibilities?

Mr. GEARAN. No, I don't recall this as a regular basis.

Mr. CHERTOFF. Did you recall them as an occasional?

Mr. GEARAN. I don't recall this document. But I have no reason to dispute this as the kind of thing he would—he might have done.

Mr. CHERTOFF. Do you know if the MW in this is Michael Waldman?

Mr. GEARAN. I don't, but that's what I would guess.

Mr. CHERTOFF. Did Mr. Ickes take notes during the meetings?

Mr. GEARAN. He does take notes from time to time. I don't recall him at these meetings. I can't recollect.

Mr. CHERTOFF. Was it his practice to take notes in the meetings?

Mr. GEARAN. He takes notes at different meetings.

Mr. CHERTOFF. That's his kind of routine; right?

Mr. GEARAN. I don't know what his routine is, to be honest with you. This—

Mr. CHERTOFF. In your observation, so far as you are aware.

Mr. GEARAN. At this point in time.

Mr. CHERTOFF. Was he keeping notes in order to be able to come up and summarize what the assignments were for the Whitewater group?

Mr. GEARAN. I don't recall that he did take notes or he didn't, Mr. Chertoff.

Mr. CHERTOFF. You remember him taking notes on some occasions; right?

Mr. GEARAN. During the past 2 years, yes.

Mr. CHERTOFF. With respect to these Whitewater group meetings; right?

Mr. GEARAN. No, I don't remember him taking notes at these meetings or not.

Mr. CHERTOFF. You don't remember one way or the other?

Mr. GEARAN. I don't recall.

Mr. CHERTOFF. If you go to S20761, it says here, "Research issue of whether then-Governor Clinton used political or other pressure to see that Madison Guaranty be given special consideration. (Counsel, "BL," that would be Bruce Lindsey, "PB," Paul Begala, "MW," Michael Waldman, "assigned 1/7.)" What was your understanding of how that kind of research got taken care of?

Mr. GEARAN. You mean how they did it?

Mr. CHERTOFF. Yes.

Mr. GEARAN. You mean what sources they used?

Mr. CHERTOFF. Yes.

Mr. GEARAN. I don't know in the specific instance how they would have done it, through the public research or files or in terms of a NEXUS search. I don't know.

Mr. CHERTOFF. The next reference says, "Reference in 1/8 press that Chris Wade, Arkansas realtor, has document re Whitewater, but won't release unless President Clinton asks for them to be released. (MW—assigned 1/8.)" How would one research that kind of an issue? Were people being sent out to Arkansas to fact gather on this?

Mr. GEARAN. No, I have no knowledge.

Mr. CHERTOFF. How would you research this?

Mr. GEARAN. I don't know. I didn't assign this. Nor was I tasked with that. I don't know how that was done or assigned or if it was concluded or not.

Mr. CHERTOFF. I just want to go down, there is a reference to a PG. Who would PG be?

Mr. GEARAN. I'm sorry? Where are you?

Mr. CHERTOFF. Now on item number 13 on the preceding page. Who would PG be?

Senator SARBANES. What page?

Mr. CHERTOFF. This is S20760. It is the first page of the 10 January 1994 Memo.

Mr. GEARAN. I don't know. Mr. Chertoff, I don't know what Harold meant specifically. PG could be Pat Griffin, who is Congressional Relations.

Mr. CHERTOFF. Who would that be?

Mr. GEARAN. Patrick Griffin with Congressional Relations, given the context of it.

The CHAIRMAN. And it refers to Congressional members.

Mr. GEARAN. That would be my guess.

Mr. CHERTOFF. Let me just finish up with your memo regarding your discussion with Mr. Gerth.

The CHAIRMAN. Can I just ask one thing? Mr. Gearan, looking at this memo, move it over a little bit please, "To: Whitewater group"—the other way. "From: Harold Ickes, Date: 10 January 1994." Here you have almost a daily—it is a daily and very intensive kind of meeting held at, you tell me. Where were they held during that week of January, starting on the 4th or 5th?

Mr. GEARAN. Principally in the Ward Room.

The CHAIRMAN. Where was the first meeting held?

Mr. GEARAN. Mr. McLarty's office, I think.

The CHAIRMAN. Mack McLarty, who was he?

Mr. GEARAN. He was the Chief of Staff.

The CHAIRMAN. He was the Chief of Staff. So this is an important meeting. Is that the meeting the First Lady drops in at?

Mr. GEARAN. I believe that was the first meeting, if she did drop in and it was in Mr. McLarty's office.

The CHAIRMAN. And we have Bernie Nussbaum there?

Mr. GEARAN. Yes, sir.

The CHAIRMAN. What was he at the time?

Mr. GEARAN. The President's Counsel.

The CHAIRMAN. The President's Counsel. Chief of Staff at some point in time. First Lady. Who else?

Mr. GEARAN. Joel Klein—

The CHAIRMAN. Who was he?

Mr. GEARAN. The Deputy Counsel.

The CHAIRMAN. Deputy Counsel. Go ahead.

Mr. GEARAN. Neil Eggleston.

The CHAIRMAN. Who was he?

Mr. GEARAN. He was an Associate Counsel.

The CHAIRMAN. Go ahead.

Mr. GEARAN. George Stephanopoulos.

The CHAIRMAN. Who was he?

Mr. GEARAN. He was a Senior Adviser to the President.

The CHAIRMAN. Who else?

Mr. GEARAN. David Gergen.

The CHAIRMAN. Who was he?

Mr. GEARAN. He was Counselor to the President. That's what my notes reflect.

The CHAIRMAN. That's on the 4th. On the 5th, where is the next meeting held? By the way, how long does that meeting go, do you know how long?

Mr. GEARAN. I can't recall, sir.

The CHAIRMAN. That's not a 10-minute meeting?

Mr. GEARAN. No.

The CHAIRMAN. I mean, the First Lady, at some point toward the end, drops in and she stayed for about 20 minutes or so.

Mr. GEARAN. I don't recall it was that long. I don't know how long the long meeting was.

The CHAIRMAN. How long were some of those meetings? Did they take 2 hours, 3 hours?

Mr. GEARAN. I would say they averaged, the Ward Room, maybe 45 minutes.

The CHAIRMAN. When is the second meeting? That's the 5th?

Mr. GEARAN. It is the 5th. I don't have a location on it. I don't recall where it was.

The CHAIRMAN. Same basic group of people?

Mr. GEARAN. Same basic group. Mr. McLarty was there. So I don't know if that means it was in his office or not. I don't recall.

The CHAIRMAN. We will speak to some of these other people and hopefully get their accounts. I have to ask a question publicly to both Counsels. Given the information that we have requested, would it be fair to assume that we should have received some kind of notice or to conclude that we would get some kind of information from some other members of the White House? Of course, maybe they didn't keep notes. But certainly as it relates to their schedules it would seem to me that might be something given the number of people, we could probably find a little more information.

I would hope that we might be able to do so. This gives us a point of reference, the 4th, 5th, 6th, 7th and these people who attended. It is an important thing. Then you have the meeting on the 5th, the 6th, the 7th and we go through. Now, we go to the 10th, "To: Whitewater group."

Now to the best of your recollection, did you receive or see anything like this memorandum?

Mr. GEARAN. I don't recall receiving it, Senator. This was not in my files, I don't believe.

The CHAIRMAN. Tell me about the Whitewater group, when was it formed?

Mr. GEARAN. My recollection was, as I said, when Mr. Ickes joined the White House staff, it was our understanding he would be the principal person on this. It was right at the beginning of his tenure at the White House.

The CHAIRMAN. Wasn't there another group formed earlier to deal with the question of Whitewater and the Treasury and the inquiry that the Banking Committee was undertaking earlier on and the statute of limitations and the question of who was going to be involved?

Mr. GEARAN. I don't recall that, Senator. I guess—I am just trying—

The CHAIRMAN. Yes, I thought there was testimony that there was another group that Mr. Podesta was working on and that it predated Mr. Ickes. I was wondering if you were aware of a prior group.

Mr. GEARAN. I think Mr. Podesta's work on this followed this period of time.

The CHAIRMAN. Anyone else work with him on that?

Mr. GEARAN. I'm sorry? Who worked with him on it?

The CHAIRMAN. Yes.

Mr. GEARAN. I think it was largely the Counsel's Office.

The CHAIRMAN. OK. I'm not going to ask you to speculate. There were others. We will ask them.

Mr. GEARAN. I don't mean to mislead you in any way.

The CHAIRMAN. No, I understand.

Mr. CHERTOFF. Mr. Gearan, let me turn to one last topic. You were aware, I take it, in the fall of 1993 that the Small Business Administration was being asked questions by the media concerning David Hale and the investigation of David Hale; right?

Mr. GEARAN. There was this memo that I—are you referring to the memo from the Small Business—

Mr. CHERTOFF. Well, you received a memo. Let's put that up. It is S20448. It is dated December 2, 1993, from Kathy McKiernan. Who is Kathy McKiernan?

Mr. GEARAN. She's a Press Assistant in the Press Office.

Mr. CHERTOFF. It was to Dee Dee and you, and who is Arthur?

Mr. GEARAN. Arthur is Arthur Jones, who was the Deputy Press Secretary at the time.

Mr. CHERTOFF. It says, "Small Business Administration Deputy General Counsel Marty Techler granted an on-camera interview to Alan Frank of ABC News yesterday for a story ABC is preparing on the SBIC and its role in the Capital Management/Whitewater Inc. story. A summary of the interview, by SBA press person Janice Kearney, is attached." Then attached at Bates numbers 20449 and 20450 is a 2-page summary of the interview prepared for the White House Press Assistant by the SBA. These were in your files; right?

Mr. GEARAN. Yes.

Mr. CHERTOFF. You produced them recently; right?

Mr. GEARAN. Yes.

Mr. CHERTOFF. Was it the practice of the White House to keep tabs of what the agencies were doing in terms of having agency officials giving interviews to the news on Whitewater?

Mr. GEARAN. It was the practice of the White House, I believe it is everyday, to have a conference call with the various public affairs agencies to assess what is going on in the Departments across the whole range of Administration issues. I don't know in what context this came into the Press Office, whether it is through that conference call, but it is certainly the practice to have the agencies keep the White House informed of what is going on in their agencies and what news stories are being worked on.

Mr. CHERTOFF. Did this liaison function fall within your area of responsibility?

Mr. GEARAN. Well, this was run by the Press Office. That—

Mr. CHERTOFF. That was under you as the Director of Communications?

Mr. GEARAN. At that point, it was under mine.

Mr. CHERTOFF. Do you know about a situation in which the White House in September 1993, made efforts to influence the way the Small Business Administration characterized Whitewater or Mr. Hale in news accounts?

Mr. GEARAN. I don't believe so.

Mr. CHERTOFF. Let me put up a document we have seen previously, OIC 1030. It is to the SAC, Little Rock. It is an FBI document from Supervisory Special Agent Steven Irons regarding a conversation the writer had on September 28th with an attorney for the SBA involving David Hale. I hasten to say this occurs before the December interview with Mr. Techler. But it does talk about Mr. Techler.

It goes on to say "writer," that would be the agent, "mentioned the media reports of SBA spokesman Techler's comments concerning the case and noted Techler was not helping matters by stating certain activities were not criminal in nature when he did not have all the facts. Seay" that's the SBA lawyer "advised she had spoken

to SBA in Washington, possibly Mark Stevens, and understood officials from the White House had urged SBA to make such a characterization due to the mention of Whitewater Development in some news accounts and White House desire to avoid any inference criminal activity could have occurred in relation to Whitewater Development and Hale's company." What do you know about this?

Mr. GEARAN. Nothing. This is the first I have seen of this.

Mr. CHERTOFF. Never heard of any efforts by White House communications officials to influence the way in which the agencies they were liaising with were characterizing matters that might touch on Whitewater?

Mr. GEARAN. I'm not aware of anything in this matter, I don't believe. This is the first I have seen of it. I can't go beyond that.

Mr. CHERTOFF. But at least you are aware that somewhere within the communications apparatus at the White House, they were keeping tabs on what was being said by the SBA concerning Whitewater because we have this memo in December; right?

Mr. GEARAN. Well, yes, that they would keep the White House informed of news stories, as was their practice, yes.

Mr. CHERTOFF. And Ms. McKiernan informed you specifically about it?

Mr. GEARAN. Yes.

Mr. CHERTOFF. When it says, "cc: BL, file: Whitewater," whose writing is that?

Mr. GEARAN. That's my handwriting. I assume I asked this to be copied to Bruce Lindsey.

Mr. CHERTOFF. You were keeping a Whitewater file as of this point?

Mr. GEARAN. As of December, I assume.

Mr. CHERTOFF. I think my time is up, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to address an issue that is increasingly concerning me, and I do it because I just received a letter yesterday from the Vice Chairman of the Federal Deposit Insurance Corporation. It addresses, I think, an increasing tendency on the part of at least some Members of this Committee and staff to make assertions which really are not factually correct but which can then injure a person or affect their reputation.

At the hearing on January 31st, Senator Faircloth said, and I am now quoting from the transcript:

What I'm getting to, and I can get there real quick. We are still going with these friends of Hillary. We appointed—I opposed Ricki Tigert for FDIC because I said it was going to be right back where we are today, she would be making judgments on Mrs. Clinton, which is exactly where we are with the RTC, folded into the FDIC. Ricki Tigert is making judgments on what was described as her favorite hanging-out pal, Mrs. Clinton.

Now, I don't recall being here when that was said, and I regret that, because it is just factually wrong. I have received a letter from the Vice Chairman of the FDIC, and let me just read it:

Dear Senator Sarbanes,

I understand there may be a misunderstanding regarding the responsibility for decisions at the Federal Deposit Insurance Corporation for matters arising from Madison Guaranty. So that the record is clear, Chairman Helfer is fully recused from all matters relating to President and Mrs. Clinton, including Madison Guaranty. A copy of the Chairman's recusal is enclosed. As Vice Chairman, it has been, continues to be, and will be in the future my responsibility to ensure that these

matters are handled appropriately by the FDIC. Thank you for this opportunity to clarify the record.

Sincerely,
Andrew C. Hove, Jr., Vice Chairman.

Mr. Chairman, the reason this is of extra concern is because this was the Committee—well, the Banking Committee of which all its Members are here—that confirmed Ricki Tigert to be the Chairperson of the FDIC, as you will recall. In that confirmation proceeding, there was some discussion of this issue, and she gave a recusal statement.

Let me just quote that:

In order to avoid any appearance of conflict of interest or loss of impartiality in connection with any investigation, inquiry or determination concerning President or Mrs. Clinton in their personal capacities currently or hereafter pending before the Federal Deposit Insurance Corporation, I, Ricki Rhodarmer Tigert, will, if confirmed by the U.S. Senate to the Office of Chairperson of the Federal Deposit Insurance Corporation, recuse myself immediately from participation in any such investigation, inquiry or determination.

Now in light of this record, the recusal statement, which actually was filed with this Committee, which was the one that confirmed her, and I'm glad this matter was brought to my attention, but to have statements that went on the record saying that we are "going to be right back where we are today. She would be making judgments on Ms. Clinton, which is exactly where we are with the RTC folded into the FDIC. Ricki Tigert is making judgments on what was described as her favorite hanging out pal, Mrs. Clinton." That is absolutely not the case. It is a clear example in my view of really abusing a person and abusing their reputation.

I want to include in the record this statement from the hearing of January 31st, of the letter I have received from the Vice Chairman of the Federal Deposit Insurance Corporation to which is attached the recusal statement made by Ricki Tigert on February 7, 1994.

The CHAIRMAN. So ordered to be included in the record.

Senator SARBANES. An outrage.

The CHAIRMAN. I would ask that the letter of February 13th be put in the record. I find it deeply distressing that I just saw this letter for the first time, literally minutes ago when Counsel referred to it. This is a letter—and I do not want to impute this to the Special Counsel, Jane Sherburne. I want that to be understood, but it certainly is distressing that at this late date we get information that obviously concerns Whitewater and the first memorandum that I see on top says, "To: Whitewater group, From: Harold Ickes, Date: 10 January 1994, Re: Assignments." I have to tell you, that wasn't a small group.

I ask Counsel and our staff, as best you can recall, have we received any memorandum from any of the other members of the White House or the White House group that looks like this memorandum?

Mr. CHERTOFF. Other than the two copies we received with the submission we got in the last couple of days, my best understanding is we have not seen documents like this.

The CHAIRMAN. Up until?

Mr. CHERTOFF. Two days ago.

The CHAIRMAN. If you have a group, and we will find out how big this group was, why wasn't this produced sooner? I can understand if one member of the group doesn't produce it. But did everyone lose this?

Now, we will probably have someone come in and say the group consisted of two people or maybe one person. This is incredible and not acceptable. How can we be accused of dilatory tactics, when, very candidly, this information that we requested should have been made available, here, "To: Whitewater group, From: Harold Ickes." Let me inform you that we have requested Mr. Ickes for next week. We have a great reason for calling him——

Senator SARBANES. Mr. Chairman——

The CHAIRMAN. Let me finish. Now, we have requested him. We haven't subpoenaed him to come in next week. I understand his counsel has indicated to us that he has a deposition on that particular day. We try to be accommodating. And we said we aren't going to vote out subpoenas unless they were necessary. We are going to continue to do so. But I would think that the work of this Committee is such that the deposition should be put off and that Mr. Ickes, given the information that has been developed within the past several days, make himself available. If he doesn't make himself available, do we have to subpoena him in?

Now if you want to say that this isn't important and his testimony isn't important and relevant, that may be one thing. I believe the record clearly indicates and substantiates that it is important. So, I am not happy that some of these things are painstaking. I am happy that the information is produced later rather than never.

I must say, Mr. Gearan, you are in a very tough position, and I recognize that. I recognize given the sensitivity of the meetings, the intensity of the dialogue, et cetera, and your position that it is not easy. I understand that. If at times I find some of the responses less than completely responsive, I think that you would feel the same way given the circumstances. I am not passing judgment. I think you are in a difficult position given your circumstances.

I have to say, again, to you and to your counsel we certainly prefer getting these things. There is no doubt in my mind we are going to get more. No doubt. Because just as the information that you have provided gives us other relevant facts, some that you may have been aware of, and some that you were not aware of, we will continue to follow upon this. As others see this develop, they may become more candid with Congress and this Committee's work, and be more forthcoming.

It is one thing to say something when there is no evidence or witnesses to contradict the statement. It is quite another thing when information begins to develop. I think that is what is beginning to take place here with greater frequency.

I do not mean to attribute that to anyone specifically or to the witness today. Again, I recognize that you are in a tough position. I think that the contents of your notes are very revealing.

Now some people may, and it appears to me that there are some spokespeople who make rather strange interpretations, not just of this document, but repeatedly, "vacuum" doesn't mean vacuum, "close the door" doesn't mean close the door and so on. This is not the first time and it is not only with respect to your notes. That's

what upsets some of the Members, and I think they feel that they are being trifled with and that certain persons are not being forthcoming.

Again, I also want to say to Ms. Sherburne, because she has a job and she can only produce what people give her. She can go back and circulate memos but people still may not be forthcoming. I have to tell you if this is a member of the group, and I happen to know that from past testimony and we can search the record, there were other members of the group. What happened to their memos? Did they throw them out? Disregard the requests of this Committee and the Special Prosecutor? Those are the questions that reasonable people would ask. And I raise it. I find this document very distressing today. It is not one attributable to you.

I have to tell you something else, Mr. Gearan. I might have found some of your answers not responsive. Aside from that, I believe you when you said you didn't receive this memo. But I also believe a substantial number received this kind of information and other information, and it has not been produced to this Committee.

Now as it relates to Mr. Ickes, I have to say that he has to make a determination whether he and his attorney want to come in this week. I think we scheduled him for Thursday. If he doesn't want to come in, we will meet Tuesday. I recommend to vote a subpoena to require his appearance. But we will leave that to him. He must make the call.

I thank you for your appearance today.

Mr. GEARAN. Mr. Chairman, if I might. I appreciate those closing remarks about my efforts here. I would just like to reiterate that I have done my level best before this Committee in my depositions and in my testimony twice and to the Banking Committee and to the other authorities to recall as best as I can. I don't want to add to the confusion that already exists around this issue. I just want to help you in your efforts and anyone else to recall as best I can, while it may be limited, which I can appreciate your view on that. I am just trying to present it as best and as completely as I possibly can.

The CHAIRMAN. Thank you for your cooperation. Thank you for being here.

This Committee stands in recess until Tuesday.

Senator SARBANES. Aren't we going to do our other panel?

The CHAIRMAN. No.

Senator SARBANES. Those people have been here all day.

The CHAIRMAN. Well, we advised them at our noon break that it would be doubtful if we would take on another panel. One witness would require at least 2 hours. It goes beyond examining the question of who was in the document room and who wasn't. We have advised them, one of their counsels indicated rather strongly that he wanted to proceed. We have indicated to him that we were not—it's a quarter to 6:00. We started at 10:00 a.m. We took a little more than an hour break. They will be scheduled, if possible, for this week, and we will resume Tuesday at 10:30 a.m.

Senator SARBANES. Are they going to be heard on Tuesday?

The CHAIRMAN. I believe we are attempting to work out a schedule with Ms. Susan Thomases, and with Wooten Epes, who is the former Director of the Arkansas Development Finance Authority—

they would probably come in Wednesday. Mr. Ickes is scheduled for Thursday.

Senator SARBANES. Who is scheduled for Wednesday?

The CHAIRMAN. We are attempting to work that out, given the fact that we have two witnesses, Ms. Thomases, we are going to see if she can come in sometime during the week, and Mr. Ickes, who has just, as of this afternoon or sometime today advised us through his attorney that his attorney had a deposition.

That happens to be the problem. If necessary, we will bring Mallard and Wooten Epes in Tuesday or Wednesday. But obviously this depends on the schedules of the people involved. Again, in order to accommodate and be reasonable, we have not sent out summonses for a specific date. So, we will convene Tuesday, 10:30 a.m., subject to the witnesses' availability.

Now if Mr. Ickes and his attorney can't make it that day, but they can make it another date or make it on Wednesday instead of Thursday, we will try to work that out. Obviously, he is important and we look forward to his testimony. We would like to do it in a manner that accommodates reasonably the professional schedules of his attorney and the work of the Committee.

Senator SARBANES. We have raised the issue of the subpoena to Hale. I take it we would be ready to go ahead with that?

The CHAIRMAN. We will take that issue up. Counsels will discuss that. It would be helpful for Mr. Hale to appear.

Senator SARBANES. This is for documents, not for Hale. Not Hale as a witness. Hale's documents.

The CHAIRMAN. Sure. Our Counsels will discuss the various ramifications of the proposal submitted, I believe, the day before yesterday. Mr. Chertoff will discuss it and we will make a decision by tomorrow.

Senator SARBANES. Is it a possibility that neither the witnesses who were going to be heard today will be heard, that it won't be necessary?

The CHAIRMAN. No. One of the witnesses is absolutely essential. I think it is Mrs. Clinton's scheduler. We will bring her in here.

Senator SARBANES. How about the other lady?

The CHAIRMAN. I'm not certain. We might be able to by way of deposition. We may be able to put the depositions in the record.

Senator SARBANES. I looked at that deposition and I have to tell you I didn't really see why she was being brought as a witness.

The CHAIRMAN. Counsel tells me he doesn't believe it will be necessary to bring in Ms. Feinman, the deposition could cover that.

Senator SARBANES. That's what I thought.

The CHAIRMAN. We will summarize the deposition, it will take us 10 minutes to put it in.

We stand in recess.

[Whereupon, at 5:55 p.m., the hearing was adjourned, to reconvene at 10:30 a.m., on Tuesday, February 20, 1996.]

[Appendix supplied for the record follows:]

5 020564

Whitewater - 4 January
- Martin Office -

Neil - Docs to DOJ then others turned
up + not off. Continued on the
for release

- Fed Grand jury in Arkansas
(US Attorney recused) Career prosecutor - some
investigating referral from RTC
in Madison

- Docs may have relevance to GSI - for
investigate of diversion of funds
from Madison to Whitewater.

- Docs under jurisdiction of fed prosecutor - none
Claims now is any career prosecutor
is subject to ~~no contact~~ of politics

Career prosecutor has docs -

feel
The
concerns

- Public perception of independent counsel
a la Watergate

Everytime we move, NYT says jump higher



S 020565

- Risk of AG getting out front in -
naming a counsel let with ldschp

~~Under statute AG has to go to ct & ct
appts -~~

- s statute AG can appt -


Neil - Turning over papers - brought congl credibility
for a much more

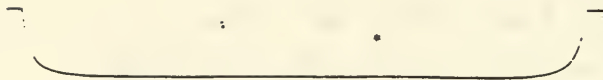
GS - 10 stories - each 2-3 days -
40 days of stories
+ will be at 35%
like 1993 - E Gays - Mithy

DE ~~but counsel operates differently~~
than criminal prosecutor
They take on a life of their own

Joel - New info - no spel pros
You can turn one at a x

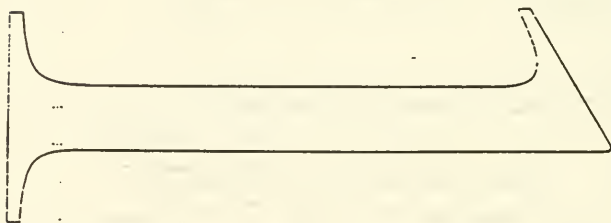
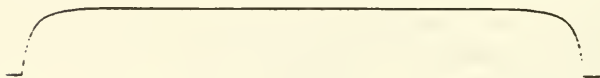
call her own
person conf



S 020566


HKC enters - looks like \approx inty
might be inverted -

- Detached better



Whitewater Mto - 5 January

Denise

No substantive diff in mid counsel
vs. prosecution

y App't outside - as counsel or prosecutor
subject to no control & come in &
decide to get someone.

Even if a goodhearted Nussbaum
would worry how he goes back to NYC
& don't watch anyone.

Will have a 3-4 yr investigation. Lies

will be under a microscope

After 3 yrs - goodhearted Nussbaum will have
written 400 page report

Badhearted guy goes in & decides a swell
of corruption & can show some things
of those people close around principal.

Instances where it has worked:

Billy Carter - Paul Curran (a client of mine)
app'd for G-Smos. Wrote report,
didn't expand & went home.
This a rare guy

Fort Other special counsel have been particularly
 Leagate. Banking scandal

BM Nick Brown was investigating whether DOJ took
 computer servers away from his team
 Not as sexy or sensitive as POTUS
 Leagate didn't touch conduct of POTUS. It
 was within council's office.

It depends upon case

Fort 1. DOJ prosecute pursuant to a statute
 trigger method of out of DOJ.
 Ct will have probed Walsh
 Can only be dismissed for cause
 Donovan. H Jordan. Watson

Special Counsel - by the law passed:
 Cox. Jaworski.
 Appointed by AG to the Ct.

Republicans (BM Bauer) used special counsel
 quite cleverly. They paid people
 Boman/Lacey - as Judge.

- 5 -

Wed

lets get off with we'll have
 spel pros or counsel.

HRC + BC don't want it

- Discuss where we go from here

3N

Kendall will prepare a white paper on the
 Clinton story on Whitewater.

It may take two weeks

- Prepare this - along with Q + A's on
 specf issues. At same appropriate x
 we release this - statement

mm

Take Time to ~~prepare~~ ^{prepare} Report

26

US diffcult due to conversations vs.
 documents

HI

Discuss of counsel to the biggest &
 work of the

Discuss: Production

Press Strategy

Spokes pers -

Joel
 — In a couple hrs - draft of Q+As
 need to be approved by Kendall & HRC

DG ~~highest price Pacifism - & no facts~~

4.7.
 — Find as much as possible
 + Q+As + argumentative document

Get the argument on why not a spl counsel?

— No off evidence of wrongful acts

(can't app't someone every time
 there's a charge)

There has to be a basis

— Republican appointee to moving investigation
 GJ is citizens available to look at ev.
 and an Independent AG

Donald Mackay

1971-75

- Nixon / Ford
US Atty So Dist / LL

then LL Dept of TX

1991 - to DOJ
career

= no credible evidence

- Does over

- They've done enough

Matter of principle / bad politics



VPOTU)

5/1

I'll do it - I'm sure it will help.

- need to dump all documents

Luncheon

no 2 on Whitehaven

PM

Lindsay notes that Kendall
aware of subpoena

S 020573

Whitewater Uto - 9³⁰ Ar

Documents

- 1) 2 pages
- 2) Q + A - TP
- 3) Narrative - comprehensive
- 4) Chronology

Whitewater 5³⁰/_P 1/6/1


- Beverly Bessette letter - info
 BB → Waldman

get a lawyer to check law on issuance
 of preferred stock -

- ind. panel of regulators -

_____ P
 INQUIRY
 _____ WLT
 ±

disc
 (Kno.)


 S 020575

Whitewater 8/7/94

1. Reno: denial —
 "haven't decided"

II

- III We cannot affect the scope of the prosecutor
 Politically - fewer assets to lesser the exposure

- IV Madison Guaranty not getting special treatment
 - Most important thing to prove not work
 GS: James taught us the campaign to head it this

- V PB. Dr. Waldman → to Ark to meet c Beverly Barrett
 Try to poke holes in their story
 - Try to get ind. validation from securities atty
 - Search of Ark regulator

X6 { HRC Reames = 2 hrs
 & to Europe

{ Get in a group of attys to discuss
 Spel/line those

{ ~~Get dropped kicking into it for 4 hrs~~

{ reach agreement on SOL - can be used as
 our friend for agreement on Spel Council

{ All agree (but BN) that Reno is boxed in
 but C starts

Spel Council - 2 hours meeting was not successful. (2) Reno has shut the door; (3) if we ask, it looks like we have ducked.

Boxes going to some prosecutorial authority anyway

BN - Don't want to write; Prefers can't hearings to Pusch or Carl

HX - Mts of attys outside of WH

Bru. Bassett - is so up

if we put this up, we're done
 let's not talk it to death - let's just get it done

PERSONAL
 S 020577

177 - We can't send P.O. now
 - it will come out

Tell my item → make sure her story is OK

Tisdale? - in Lindsey item
 Skip? → with pass
 Po found my lounge?

Quam - arm's length

Whitewater - r/many Machi Office

HT - Trying to reopen it - us - impossible
 POTUS can't -
 staff can't

Christopher to talk to POTUS
 Bob Bennett

Hein Spoke with Panyers

BN - Indictments will be Betsy Wright

Whitewater 8 Jan
Ward Mr

5 020579

BN argu aginst spel prosecutor

H/ Alan Carver at DOJ - bad guy
When Kendall called - when he called
on speakerphone were 2 FBI agents + Jim Nixon
Those guys are f--- vs blue

Conversation with POTUS - for ⁽¹⁾ release of statement
 Story - hatraamide; not just insiders

- ~~Make clear~~

- ~~on own accord~~

- ~~on off chance it may be helpful~~

- ~~not because~~

- ~~anywhere by anyone~~

- ~~any authority so wrongdoer~~

⇒ lost \$

⇒ ~~Never rec'd any inquiries~~

5 020580

Why now?

No indication of anyone - govt
 If you want it - we'll let you see it

Very nice - re

No one has ever suggested

we did anything wrong

- Maybe helpful

⇒ Prostate homicide

⇒ Dealing with intellectually dishonest people

⇒ Do not know/care of truth

⇒ Case/ investigation

(3)

- If anything is it -

-

-

-

-

-

-

S 020582

- no privileges
- no subpoena today
- no assets
- voluntarily action
- Kendall will ask for subps

put every thing out
put people's mind at
never asked

in view of
public - first
no thing to be done

HRC will comments on release

5 020583

- Tgth -
- Nothing withheld

- TOGETHER
not lawyers

① Why now? R

② MT

③ What's in it?

File: vvv/Barren

THE WHITE HOUSE
WASHINGTON

January 11, 1994

~~MEMORANDUM FOR CIRCULATION~~

FROM: JAKE SIEWERT
SUBJECT: Preferred Stock

At the suggestion of Michael Waldman, I have done some research on the issuance of preferred stock by S&L's in the early 1980's. Several media accounts have portrayed the 1985 plan to have Madison Guaranty issue preferred stock as somehow "novel" or "unique." That is far from the case:

- **Authority to Issue Preferred Stock Granted in 1979.** The American Banker reported in August of 1979 that federally insured S&Ls have had the authority to issue preferred stock since 1975.
- **A Florida S&L Got FHLBB Approval for Preferred Stock in the 1979.** In August, 1979, the American Banker reported that a Florida savings and loan association became the first Federal S&L to issue preferred stock as the result of a ruling by the Federal Home Loan Bank Board.
- **A Bank in Mississippi Issued Preferred Stock as Part of a Successful Reorganization that Received National Recognition.** In February 6, 1980, the American Banker reported that a S&L in Mississippi was recapitalized under a preferred stock plan that received the approval of the Mississippi Commissioner of Savings Associations and favorable responses from the Securities and Exchange Commission and the Federal Home Loan Bank Board. After the recapitalization, it made substantial progress rebuilding and reported profits in excess of \$2,000,000.00 in 1979. On September 29, 1980, the merger and its use of preferred stock received a detailed and favorable profile in American Banker.
- **A Major California Bank Merger in 1980 Involved Preferred Stock.** On August 27, 1980, the New York Times reported that the Golden West Financial Corporation, a savings and loan holding company based in Oakland, California agreed to acquire the Westdale Savings and Loan Association, Los Angeles in a scheme involving the issuance of preferred stock. The bank merger involved over 100 thrift branches.

S 929589

NOTES ON PREFERRED STOCK
JANUARY 11, 1994
PAGE 2

- Large Banks Began Issuing Preferred Stock in 1982. In November of 1982, City Federal Savings and Loan Association, the largest depository institution in New Jersey, announced plans to offer 2,000,000 shares of cumulative convertible preferred stock through an underwriting syndicate led by Morgan Stanley.
- Use of Preferred Stock Not Confined to the Business Papers. On September 13, 1983, the Christian Science Monitor ran a story titled "How Banking Barriers are Coming Down" that discussed the use of preferred stock in bank mergers.
- Federal Regulators Acknowledged that the Issuance of Preferred Stock was Common in 1984. In April, 1985, the Federal Home Loan Bank Board which was operating FSLIC amended its regulations on the issuance and use of subordinated debt securities by federally insured savings and loans. In the new regulations, the FHLBB specifically said that many S&L's had begun to issue preferred stock: "The Board is aware that during the past year many institutions have issued subordinated debt to "limited purpose" finance subsidiaries which obtained the funds to purchase the subordinated debt by issuing preferred stock to independent third parties." The FHLBB rule on subordinated debt was first published on December 5, 1984.
- By 1984, the Use of Preferred Stock by Thrifts Was Widely Discussed in the Banking and Legal Press. For example, a December 1984 article in Legal Times, "Offerings Provide Thrift Financing Alternatives," analyzed the use of preferred stock by thrifts in the early 1980's.
- Federal Regulators Expressly Authorized the Issuance of Preferred Stock by Finance Subsidiaries in 1984. On July 12, 1984, the FHLBB issued regulations authorizing a federally chartered savings and loan association or savings bank to establish a subsidiary "whose sole purpose is to issue debt or equity securities that the association is authorized to issue directly . . . and to remit the net proceeds of such issuance to the association. . . ." (49 Fed. Reg. 29,357, 1984)
- In 1983 and 1984, Federal Regulators Encouraged Subsidiary Preferred Offerings Under Certain Circumstances. See opinion letters by FHLBB General Counsel Norman H. Raiden dated Dec. 12, 1983, and March 23, 1984 (responsibilities of FSLIC as receiver of failed insured institution); 49 Fed. Reg. 29, 357 (1984) (new FHLBB regulations on finance subsidiaries).

Mark: fgi
Bm

Judge expects to be indicted in SBA loans

BY JONATHAN GROVES
Democrat-Gazette Business Writer

Pulaski County Municipal Judge David Hale says he expects to be indicted on federal charges this week.

And he said he blames part of his problems on bad loans made in the 1980s to groups that included the president of the United States and the governor

of Arkansas. Hale, a municipal judge since 1979, said he expects to be indicted for allegedly misrepresenting uses for loans made by Capital Management Services Inc., a small business investment company licensed to make Small Business Administration loans.

He provided no specifics about the expected indictment and said it is a separate matter

See HALE, Page 10A



S 020454

Telephone Log for GEARAN, MARK		Page 1: 1
New Calls		
09/23/93 11:42 AM	ENGELBERG, STEVE NYT Ph #: (202) 862-0401 Home: Other: Car: Fax:	RE: was upset because you had not called him back. He is taking up the Jeff Girth story. Said "We might have to say the WH would not return calls" 1st cll 10am Taken By: CHAD
<input type="checkbox"/> Answered		

- filed story
 - anticipate story tomorrow
- no recollectn
- don't believe it happened

Qstns:

(1) There are 3 occasions of commission E BC

Feb 1986 BC - mtg in Castle Grade

⇒ Does BC have recollection of mtg?
if so - What happened

(NO)

(2) Two other

Dec 1985 mtg in Capitol:

Hope you can help me r/p

5 020452

(3) Make mtg.

• if in Dec - BC out of state?

④ Notion that indirect nature by
Madison Guarantee to help
Whitewater

⑤ Investigations: MIT Box at Rose Law Firm
fax messages to Guth from Ellen saying
- consulting boxes at Rose
⇒ Susan T. sd she'd sent someone to
inventory them at Rose
by course of sale to McD - couple of tx return
no B.
⇒ where is the box? Not turned over to McD.
Guth given a balance sheet to

5 020453



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

February 9, 1996

BY HAND

Robert J. Giuffra, Jr.
Chief Counsel
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Mr. Giuffra:

Yesterday, Steven P. Paar, an examiner in the Little Rock field office of the Office of Thrift Supervision ("OTS"), found some additional documents relating to Madison Guaranty Savings and Loan Association ("Madison Guaranty") and promptly forwarded them to me. They include status reports relating to "problem institutions" from the 1984 to 1986 period. Mr. Paar was searching for a folder on investment securities and found the documents in a box primarily containing non-institution specific examination information. I am enclosing copies of the pages of these reports relating to Madison Guaranty along with a memorandum dated February 8, 1996 from Mr. Paar explaining in more detail how and when they were discovered. In addition, Mr. Paar yesterday found, in the same box of documents, some time sheets indicating time expended related to the supervision of Madison Guaranty, which I have also enclosed. Mr. Paar estimates that the Madison Guaranty related documents he found constitute less than one percent of the contents of the box in which he found them.

Enclosed with these documents is a receipt that I ask be signed by an appropriate person and returned to me. If you have any questions, please call me at 202-906-6844.

Sincerely,

David H. Enzel
Special Counsel

Enclosures

cc: Lance Cole
Deputy Minority Special Counsel
(w/o enclosures)



Office of Thrift Supervision
Department of the Treasury

122 West John Carpenter Freeway, P.O. Box 619027
Dallas/Fort Worth, TX 75261-9027 • (214) 291-2000

Midwest Region
Dallas Area Office

Inter-Office Memorandum

TO: David H. Enzel
Special Counsel

FROM: Steven P. Paar *SP*
Examiner V - Little Rock, Arkansas

DATE: February 8, 1996

SUBJECT: Madison Guaranty Savings and Loan Association
Little Rock, Arkansas
OTS No. 07601
Status Reports

As I informed you earlier today over the telephone, I found some additional documents this morning in the Little Rock Field Office relative to Madison Guaranty Savings and Loan Association (Madison Guaranty). The documents are entitled Status Report and are enclosed in this mailing. Actually, these are the reports I referred to as monitoring reports in my Senate Banking Committee interview on January 23, 1996. The documents have somewhat refreshed my memory on the monitoring practices in the Little Rock Area Office in 1985 when I became a field manager. It was the Little Rock Area Office's practice for each field manager to complete monthly status reports for each identified problem institution in his caseload of institutions.

I sincerely apologize for any inconvenience or embarrassment the late discovery of these documents may cause you and/or others at the Office of Thrift Supervision and/or Department of the Treasury. I found the documents while searching for a folder on investment securities. The documents were previously overlooked in searches of the Little Rock Field Office for Madison Guaranty related documents due to my failure to search or diligently search a cardboard file folder box located in my office. By far, the vast majority of the contents in the box relate to general examination information and topics instead of to a specific institution or institutions. Actually, there are two boxes of such general examination information; one stacked on top of the other. I would roughly estimate that the Madison Guaranty related documents comprise less than one percent (eleven legal size pages) of the contents of the box.

Additionally, I have enclosed an article, apparently dated October 8, 1986, that may help the Senate Banking Committee determine the extent of the problems in Arkansas in 1985. I recall that in my interview there were several questions regarding the extent of problem institutions in Arkansas in 1985. According to

00070106

David H. Enzel
Special Counsel
Madison Guaranty Savings
and Loan Association
February 8, 1986
Page 2

Senator Pryor's statements in the article, he believed that 17 out of 37 institutions in Arkansas were considered problems in 1986 by the Federal Home Loan Bank of Dallas. I could not specifically recall the extent of the problems at the time of my interview. I also found this article in the box.

If you have any questions, please call me. I plan to work in the Little Rock Field Office for the next several days. My telephone number is 501-576-2428.

Enclosures

cc: Debby Jenkins

0007010

DICKSTEIN, SHAPIRO & MORIN, L.L.P.

2101 L STREET, N.W.

WASHINGTON, D.C. 20037-1526

202 783-9700

FACSIMILE: 202 887-0689

TELEX: 882608 DSM WSH

388 MADISON AVENUE
NEW YORK, N.Y. 10022-1814
212 832-1800

WRITER'S DIRECT DIAL

202-828-2211

January 31, 1996

BY FACSIMILE AND U.S. MAIL

Brett M. Kavanaugh, Esq.
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490
Washington, DC 20004

Re: Mark D. Gearan

Dear Mr. Kavanaugh:

We think it appropriate to share with you a clarification of information which we provided on January 18, 1996, where we accurately reflected our understanding at that time regarding Communications Office files.

As you know, Mr. Gearan left the White House and assumed the responsibilities of Peace Corps Director in September, 1995. Prior to his departure, Mr. Gearan was on vacation and his files and memorabilia were packed up by his White House Communications Office staff. The bulk of this material was sent to White House Records Management, while memorabilia and personal items were sent to Mr. Gearan's Peace Corps office. All of us believed that documents relating in any way to the Whitewater or Foster investigations were sent to Records Management for inventory and safe keeping. Up to that time, we had followed a strict procedure that no documents relating to these matters were ever to be removed from the White House so that complete accountability for these documents could be maintained. The only exception was the production of a single one-page document to your office in July 1994.

In late October 1995 we learned of a document request to the White House as a result of newspaper stories and confirmed that the White House Counsel Office was taking responsibility for reviewing and producing documents from the Communications Office.

Brett M. Kavanaugh, Esq.
January 31, 1996
Page 2

Because we have consistently endeavored to be punctilious about document productions, and even though we thought we no longer had access to White House Communications Office documents, Mr. Gearan checked to make sure that he had not inadvertently retained any documents potentially responsive to that request. Included in this review were the boxes of memorabilia in storage at the Peace Corps which had come over from the White House. Amid this memorabilia Mr. Gearan discovered a box which contained the documents he believed had been left at the White House. This discovery was made on the afternoon of November 1, 1995, and on the morning of November 2, 1995, Mr. Gearan gave directions to his secretary to have these documents returned to the White House Communications Office by hand delivery. Without intent to waive the attorney-client privilege, suffice it to say that later that afternoon we confirmed Mr. Gearan's understanding that the documents had, in fact, been sent to White House Communications Office. In contemporaneous and subsequent discussions with White House Counsel we alerted them to these facts and were under the distinct impression that the documents had, in fact, been received by the White House and sent to Records Management and were being reviewed in conjunction with other requests for White House documents.

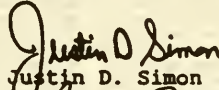
Last evening we called White House Counsel and in the course of that discussion we were informed that they were having some difficulty locating certain Communications Offices files in the Records Management system. We offered our assistance in locating this material. We learned that, rather than being sent to the White House, Mr. Gearan's Communications Office documents remained in their original White House container in storage at the Peace Corps. We, of course, have notified White House Counsel and, in order to expedite their review of these documents, sent them by courier to White House Counsel's office this morning without reviewing them. As these documents belong to the White House and the review and production of these documents is a responsibility that has been assumed by White House Counsel, we felt it appropriate to handle the documents in this manner, even though there may not be any responsive documents in the box. At the same time, given our letter to you of January 18, 1996, we thought it appropriate to promptly notify you of these events.

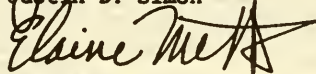
In view of Mr. Gearan's extraordinary record of cooperation with all investigations, including the investigation being conducted by your office, we regret the need to have to

Brett M. Kavanaugh, Esq.
January 31, 1996
Page 3

clarify our prior correspondence in response to your "clean-up" subpoena. While we understand that the White House is continuing to produce documents in response to parallel subpoenas from your office, and realize that this matter will not delay that production, we just wanted to make sure that the record is completely accurate.

Sincerely,


Justin D. Simon


Elaine Metlin

JDS/sls

cc: Mark D. Gearan
Jane Sherburne, Esq.
Miriam Nemetz, Esq.

Open Up on Madison Guaranty

Much as President Clinton might wish, the curious saga of his and his wife's dealings with the owner of a failed Arkansas savings and loan association just won't go away. It keeps popping up in Congressional inquiries and newspaper accounts, each time with a new and unsavory detail added to an already unflattering portrait of the cozy relationship between money and politics in Arkansas.

An important detail, disclosed by The Times's Jeff Gerth and Stephen Engelberg, is that the owner of Madison Guaranty Savings and Loan, James McDougal, helped Mr. and Mrs. Clinton repay a \$50,000 personal debt just when Mr. McDougal needed favorable treatment from state banking officials to stay in business. Mr. McDougal did stay in business, his problems got worse, and in 1989 the bank was taken over by the Federal Government, at a cost to taxpayers of \$60 million.

There is no irrefutable evidence of a quid pro quo. But the Arkansas savings and loan mess, and the Clintons' relationship to it, is not, as the White House keeps saying, an "old" story that has no relevance to Mr. Clinton or his present job. This is a man who rode into Washington on a pledge to end politics as usual, and every time the White House dodges inquiries about the old days in Arkansas, reasonable people begin to wonder about a cover-up and Mr. Clinton's sincerity.

The matter clearly needs ventilating, and if the White House won't do it, two other institutions can. One is the Justice Department, which is already looking into transactions at Madison. The Clintons are not targets of the probe.

The other is the House Banking Committee, whose ranking minority member, Jim Leach, believes that a full investigation of Madison could help the committee frame new rules to prevent future banking disasters. His request has been rebuffed by the committee chairman, Henry Gonzalez, a Democrat who until now has been a tiger on the savings and loan issue. Mr. Gonzalez accuses Mr. Leach of a Republican "fishing expedition."

Mr. Leach has also called Madison a "private piggy bank" for its owners and their influential Arkansas friends, and on this he is surely right. In addition to a string of dubious real estate investments, Madison made large unsecured loans to executives and other insiders.

Madison's practices attracted the attention of Federal auditors, whose 1984 review found "unsafe

and unsound lending practices" that could threaten to drive the bank under. Shortly thereafter, Governor Clinton named Beverly Bassett Schaffer as head of the Arkansas agency charged with overseeing state-chartered savings and loans. Ms. Schaffer had once done legal work for Madison. For the next 18 months, up to the point where Federal regulators moved in, she took no significant regulatory action.

Three months after her appointment, Mr. Clinton came to Mr. McDougal with a request to "knock out the deficit" — Mr. McDougal's words — left over from the Governor's 1984 campaign. It turns out that the deficit wasn't just an ordinary campaign debt, but \$50,000 Mr. and Mrs. Clinton had borrowed from another bank to finance the campaign. Mr. McDougal organized a fund-raiser and the debt was repaid. Federal auditors suspect that some of the donations assembled by Mr. McDougal may have been improperly diverted from the savings and loan.

Bruce Lindsey, the official wheeled out by the White House to answer questions, says the Clinton-McDougal relationship was entirely above board. Others, however, are more than mildly troubled by the fact that Mr. Clinton did not order his regulators to crack down on Mr. McDougal even after he was advised by his own banking commissioner in 1983 that the savings and loan operator was engaged in imprudent banking practices.

Suspicious that Mr. Clinton was excessively kind to his friend — at great cost, eventually, to the taxpayers — are further reinforced by the fact that Mr. McDougal had done other favors for the Clintons, including making them 50-50 partners in Whitewater Development, a real estate company for which Mr. McDougal put up most of the money. The venture ultimately failed, and the Clintons lost money. But that doesn't make their financial ties to Mr. McDougal seem any more savory.

Based on what's publicly known, there's probably not a crippling scandal here. But the White House is behaving as if there were. For example, Federal investigators say they have received little cooperation in a search for files they suspect were taken from the office of Vincent J. Foster, a White House aide who killed himself. Investigators want to know if one of those files dealt with Mr. McDougal and Whitewater.

This defensiveness isn't helping anyone. Mr. Clinton — and Mr. Gonzalez — owe it to the public to clear the air about Madison and its influential Arkansas friends.

This is important to be on top of. Bassett did a good job in camp. on this — can she now?

(transcription of handwritten notes of President Clinton)

New York Times
Dec. 20, 1993

~~CONFIDENTIAL~~

4

1 Q When were you first made aware of the issues
2 surrounding the Madison Guaranty Whitewater matter?

3 A I -- the first recollection I'd give would be the
4 meeting that I attended in October.

5 Q When was that?

6 A October 14th, 1993.

7 Q How were you advised of that meeting?

8 A It was on my schedule that day and -- to go to a
9 meeting in Mr. Nussbaum's office.

10 Q Who contacted -- who put that on your schedule
11 that day?

12 A My assistant, Steven Cohen.

13 Q And what transpired at the meeting on October
14 14th?

15 A I can recall October 14th as a busy day at the
16 White House. I had attended a luncheon where I was asked to
17 speak at the Democratic National Committee and I recall
18 being late getting back to the White House. I declined a
19 White House car, thinking it was a partisan event. So I
20 cabbled over to the hotel. And I can recall coming back to
21 the White House later than I had anticipated and my
22 assistant, Steven Cohen, reminded me to go upstairs to to
23 Mr. Nussbaum's office.

24 Asking him before that what the meeting was about,
25 he indicated that he did not know the subject matter of the

10:00 am Gerth

Dana Hale

- fed G.J. money
- misuse of sist. st
- abt to be indicted
- for fear cl. ins pressure
of people to loan

Bill Clinton
Tom Gray Tucker

1986 transactions

- called NYT to pressure
presenter

Gerth + Steve Rhykebers - W for 3 days
talk @ Hale

- believes the little truths
- Gov Clinton - loans
thru Mc Dougal
to cover debts
- allegation. Be enough
misuse of govt program
is at least a cover up

NYT asked Hale for affidavit:

FBI to local magistrate for
records of White Water

(
turned in to records
but not

Mag. signed search warrant
at 1:20 pm on day of Easter

Hale - 3 conversations & bc

- 1) Tunnel underneath LR Capitol
- 2) Mtg during campaign
- 3) in a mail

Hale has small m/v. h/t co -
insured SBA funds

Jeff Gureth

Went to Ark last wk
12 hrs interviews

Set up Capital Mgmt Services
- 1979 -

Small Business program
where children put up cap.
SBA puts up cap
- then loan it to financially
disabled bus

1980 BC calls several times
concerning his SBIC

brought in S.F. consultant to
see if state could set up



Chemato

- Larry Shipley ran it

- loaned \$50K
- it went broke
- no illegals alleged
- est. BC ties/knowledge

Fall, 1985

Conversations with Jim McDougal

& with JMcD + Jim Guy Tucker

Two things going on

- 1) McD told them: "I need help. Friends
political family need help.
JGT: figure a way to get you
more \$

(SBIC did only loan ~~\$100~~
30% of country)

McD also told him he'd run
into activist in STL.

Had to get loans/financing
and these

- Asked for list of
assets

- 2) Fall of 85
identified loans

(a) Castle water + seamer
loan of \$150K

JGT a stockholder
(b) Steve Smith

McD bus party, BC side
\$65K Cable Co.

(c) loan to Susan McD

JGT - urged him to get out of
troubled loan.

He understood from McD that
1 of loans - needed BC

Dec 1985 - tunnel under Capital
BC broke to see him

"He simply sd - are you
going to help Jim + I out?"

I sd we are working on that hand.
He said I'd really appreciate it.

Early 1986

- Examiners go to Madison Guaranty

McD + JGT are trying to help
him ↑ the capital of his SBC

- Piece of land -

- find someone who'll buy it
- Madison not finance

That appraiser says it's 747

but lists 800

- real value is 500

Net effect so he wound up
for with 5:55

Madison #

to ↓

Hale

→
pts in

SBTC

1121 loans to
entire
that Madison
has trouble o

Remembers mtg

- originally sd Feb 86

- later sd it was b4

circumstances of land deal

↳ 2/28/86

Then ~~mtg~~ p

↳ sd it was b4 2/25/86

- remembers mtg at a x
when he still didn't have \$
to lend

- Phone call from JGT
ask mtg with him + BC

Late in day after work 6:30 pm
in JGT office (sales office for
Castle Grand 145th Street)

Madison had invested in Castle

- Hale got to mtg JGT + BC

- BC in jogging or casual

- they were discussing out Frank White
talking politics.

FR of JGT with STL

- 1982 - BC's camp in debt that
MED helped erase.

Betsy Wright conferred

Mtg - no longer - has 20 mins

The purpose of loan (150K then to 300K)
was to "clean up" (McD words)
the books/records at Madison
so chambers didn't discover
critique for Madison that had
indirectly benefited White Water

Not a loan from Madison to White Water
but more indirect.
McD & BC participate in mtg

It was a natural thing. BC sd
they have can't show up.
Fact is, they sd. we did give
security for the loan
(meaning BC offered Marion Co.
properties as security for loan)

Very nervous - had to get done.

Hale

This was a team JCT - used
had to clean it up

Had to have it
had something to do & xerox

66 The sd we did offer security
for files. We have land
Held understood as land in Man
All I did remember was White with

66 Understood BC were didn't be used

Clean from mty -- and Susan McD
to look -

b/c. of probs N. Lison had
for taking care of smthg else

- covered directio but had to
cover - from too

- nothing sd of what Susan
wb do E - \$

All making sure B: have not used

Might be discarded by regulators

West, McD calls Hale

asked to loan to \$300K

April 3 ¹⁹⁸⁶ check for \$300K (copy

to Susan McD) - DBA Marketing
~~for~~ ^{for} ~~smaller~~ - not endorsed

Original check -
 goes to Madison Guaranty

FBI + DOJ have traced this &
 this way so far

They both & went to personal
 acct of McD at Madison

then converted to a Cashier check
 (don't know to who)

Hale says

original stmt of purpose put in
 the name of Susan McD for loan applicat.
 [delivered] She picked up check afterwards.

Stmt led to her marketing work. He
 can explain how she'd qualify as financially
 disadvantaged
 yet Net worth of \$2.2 mil

David Hale don't know

We've seen 1983's exam of
Jim McD 512

- critical of variety of
transactions involving
McD & wife
- particularly concerned abt
Madison Marketing
130% Susan McD

because of concern of exams
ceased functioning in 2/86
& became a DBA of Madison

Exam Report sd Madison Guaranty
or subsidiary were sole source of
revenue for Madison Marketing
- appeared inflated fees paid
- suspected Marketing Co was
vehicle to funnel \$

Asked P of Madison if any \$
of Mad Gnty went to Marketing

yet showed \$ 2.6 of Madson
Marketing went to Susan McD

No Mention of 1

Madison Marketing advancing \$ to
White Water

Principal 5K
Interest 2322.4

11/8/85 - \$7322.4 → McD check
sent to Sec'd Bank of Pangea

check by Whitewater
for note 975-985

loan Security Bank made to BC

At X Whitewater note check, it
had \$12 in acct. So funds
pl it came from Madison Marketing

Mad County
purchased

Mad Marketing → White water

BC

Transmittal ^{shifting date} 2/25/86 - then 4/4/86

Ale later sees Susan McD &
gets default judgment

Lost- all this & to postal family
- will be indicted for false stmts
w: 1985 attempt to ↑ capital 3rd

- will be indicted on false stmts
not direct to this stuff, but this
led them to where bad come -

At University Mall. bumped into Jon Clinton

BC
"Have you heard what that
fucking whore Susan has
done & it?"

- "You ought to talk to Jim"

Could construe as Susan upset on doing
something

Hale has no documents.

Two other relevant items:

Summer 86 - McD calls Hale
asks to substitute the Stmt of
Purpose for Susan McD file
3 page -

no date or letterhead.

The stmt talks of using it
for real estate matter she
would mention on
Flowers and McDones
some real estate property

McD wanted to sub this stmt - only
put in original form &
- didn't do it
- so FBI didn't have it.

Records will be made available
by this 9/80.

FBI pulled up master marketing file.

3

NYT hasn't seen original stmt
of purpose.

After later, with 31 p.m. to made.

Susan M. D. wrote saying she
didn't pay since lags in
media payments.

Hale in parking lot near office meets JGT

JGT pledges stock in Madison.
(already pledged to Weather Bank)

According to David -

handwritten note from JGT
saying he's pledged Weather
has been on it.

Note also says Clinton will help too.

That note clipped to top of pledge
docs. FBI seized that note.
Can't produce it for NYT.

Whitewater + VF

Mr. J. C. [unclear]

BC/HRE sold back shares to McD
in law office in LR
VF reports 11/31/HRE

At closing, McD + atty asked for
Whitewater corp records + tax
records

• Some uneasiness on VF described
as apologetic.

Jim Blair involved thru telephone call

— Made some guarantee
that the returns produced w/in
30 days

— don't believe that happened

by June or July — b7c VF died

McD call to VF for Records
left message

Subsequent to that, letter
sent to atty Sam Horn

& 3 yrs of the returns
sent forward —

They were later after the final
letter

VF prepared signed after additional
phone call

(Whitewest Corp. Returns)

Tx returns never filed

As of Saturday - no corp. records
have been returned to McD.

Jim McD - & wife officers of corp
but no records

Clinton has material: but not officers
of corp -

Maybe 90-92 returns - not filed.

Major Qstn:

Where are the records of
Whitewest Dev Corp
& what has happened to them?

- inventoried?

- found or disappeared?

Box of docs in Rose Law Firm
where Whitewest are

1 1/2 yrs ago.

Believe VF was involved
~~somehow knowing they were~~
~~they~~

↳ had done work for JMed

⇒ out to POTUS inty

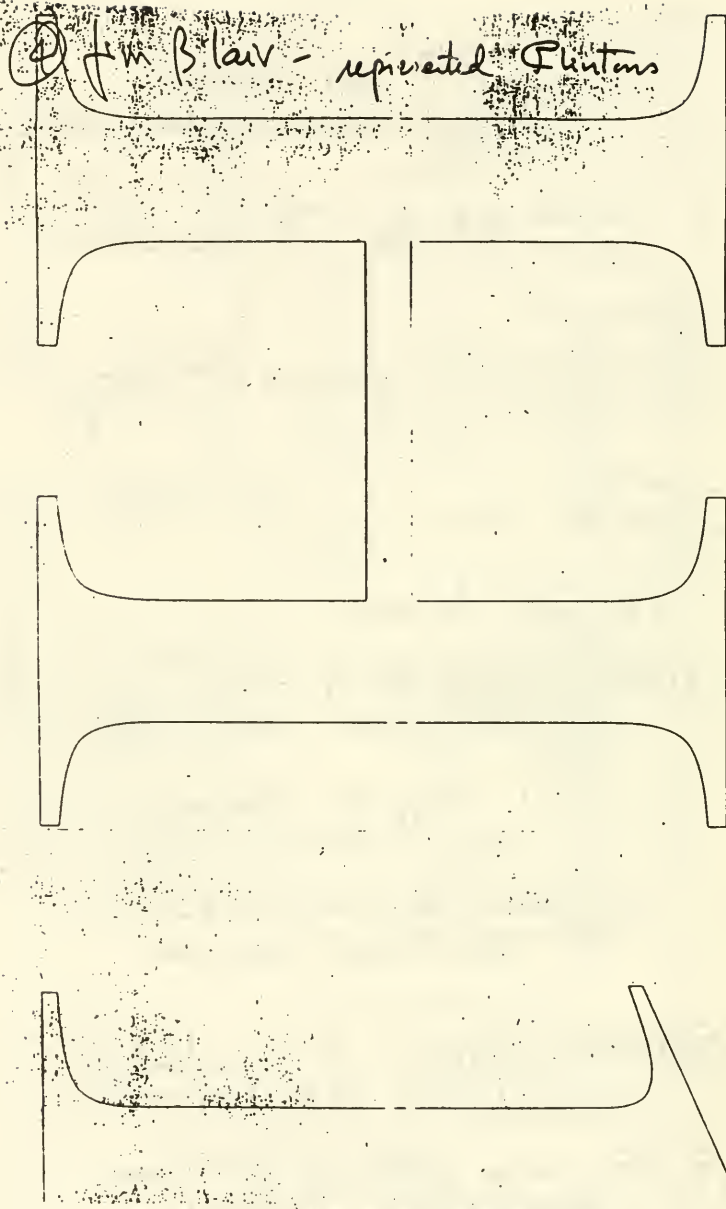
Request to see

- ① Whatever fin. records
 that pertain to Whitewater
 incl stuff from Jim Lyons'
 reconstruction

arg'd he made they are Med -
 but he don't have them

- ② POTUS recollection of David Hale
 & recent allegations

- ③ VF - astns pertain to what happed
 to records - why not turned over
 to Med
 - any WH knowledge



5 020310

1 Q And what was the conversation about these press
2 inquiries, what was discussed about them?

3 A Well, this information was discussed -- the only
4 other topic that I can remember being talked about in
5 addition to this briefly was this Early Bird warning system
6 that the department had in public affairs, that it was a
7 system where reporters' inquiries were called into a
8 central person who produced the so-called Early Bird
9 warning document that was circulated around. It was
10 designed for the purposes of preventing leaks, which I
11 found interesting.

12 Q All right. Now what did Mr. Nussbaum talk about
13 at this meeting?

14 A I recall Nussbaum, Lindsey and DeVore as
15 principal conversants here. I don't remember specifically
16 what Mr. Nussbaum would have said.

17 Q Well, was there any concern about these press
18 inquiries?

19 A I don't recall concern.

20 Q What do you recall?

21 A What I recall is pretty much what's right here.

22 Q Only that there were press inquiries. You don't

1 recall anybody in the room having any type of reaction to
2 these inquiries at all?

3 A No. Again, for the part of the meeting that I
4 was at these are the notes that I took because these were
5 questions to Treasury and about an RTC matter. This was
6 one of the first contacts, I thought, references that I can
7 recall for Whitewater. This was not on my radar screen,
8 Whitewater at this point in time. So I don't recall this
9 meeting vividly beyond these notes and the Early Bird
10 system.

11 Q Do you recall how the meeting ended, were there
12 designations of who would do things or?

13 A Well, I can tell you, based on the way I take
14 notes, that if I was tasked to do something it would be
15 indicated to do. I have, you know that I can -- I know I
16 left this meeting without an assignment. And as I've said
17 before, I know I left this meeting feeling the pressure at
18 that point in the day to get back to return reporters
19 questions but beyond this, because I wasn't tasked to do
20 anything, this was a question to Treasury. My notes at the
21 end of the handwriting is frankly typical of my handwriting
22 if I'm sort of falling out of the meeting, so.

1875

THE WHITE HOUSE
WASHINGTON

February 13, 1996

BY HAND DELIVERY

Robert Giuffra, Chief Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

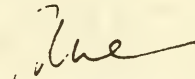
Dear Bob:

I am transmitting with this letter additional White House records (Bates Nos. S 020586 - 020761) that the Counsel's Office received yesterday from Michael Waldman, who found them in the course of an office move. In addition, we transmitted yesterday additional White House records (Bates Nos. S. 020564 - 020585), which were redacted copies of Mark Gearan's notes. After reviewing unredacted copies of the notes, Michael Chertoff agreed to certain redactions, and we delivered the records to Alice Fisher promptly.

Pursuant to the Committee's Security Procedures, we request that all of these documents be treated as "Highly Confidential." We would appreciate the opportunity to discuss with the Committee the basis for our request in the event the Chairman and Ranking Member consider redesignating any of this material.

Please feel free to call me if you have any questions.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

Enclosures

cc: Lance Cole
Minority Deputy Special Counsel

DA

Understood from McD that one of the loans
was connected with BC

December, 1985 - "the rough, rent - are you
going to be able to help fin and it
out -"

DA "Working on it hard"

BC "I'd really appreciate it."

Examines around of Madison - two things -
top the capital: ~~was~~ had a piece of land -

first owner to buy it - inflated price -
approximated for 750,000 (worth 500,000)

Madison ~~owner~~ loaned \$825,000 - 500,000 --
went to Capital since 14 paid

2/28/86

↑

MADISON

↑

SBIC

Madison

↓

Hill

M E M O R A N D U M

TO: Whitewater group

FROM: Harold Ickes

DATE: 10 January 1994

RE: Assignments

1. Talking points (counsel/MW)
2. Q&A (counsel/BL/MW, 1/5¹)
3. 2-3 page argument why no special counsel (counsel, MW)
4. History of special counsels/independent counsels—
(counsel, 1/6)

5. "Chronology" (counsel, BL, MW)

6. Op ed piece (counsel, BL, MW 1/8) *Handwritten: Not needed to work up trail*

7. Congressional op ed piece (counsel, BL, MW)

8. Response to Safire piece (counsel, BL, MW 1/6) **DONE**

9. Memo on independent counsel statute (counsel 1/8)

10. Synopsis of Whitewater/Madison Guaranty matter
(counsel, BL, MW, 1/7)

11. Memo re statute of limitations for civil actions
(counsel - assigned 1/8²)

12. Review, on daily basis, all articles from major newspapers and statements made on major electronic media re Whitewater and prepare memo to be promptly circulated to the group regarding inaccuracies, etc.
(counsel, BL, MW)

13. Contact select members of Congress about public support
(PG)

These dates refer to the date of the draft document.

² Indicates date the assignment was made.

5 020760

Handwritten: DONE

14. Research issue of whether then Governor Clinton used political or other pressure to see that Madison Guaranty be given special consideration (counsel, BL, PB, MW - assigned 1/7)
15. Reference in 1/8 press that Chris Wade, Arkansas realtor has document re Whitewater, but won't release ~~unless President Clinton asks for them to be released~~ (MW - assigned 1/8)
16. Memo re failure to take deduction on tax return for Whitewater losses (MW - assigned 1/8)


S 020761

MEMORANDUM

cc: SL

file: Whitewater

TO: Dee Dee, Mark, Arthur

FROM: Kathy McKiernan

RE: ~~ABC Nightly News Interview with SBA Deputy Counsel re:~~
SBIC/Arkansas/Whitewater

DATE: 12-2-93

Small Business Administration Deputy General Counsel Marty Teckler granted an on-camera interview to Alan Frank of ABC News yesterday for a story ABC is preparing on the SBIC and its role in the Capitol Management/Whitewater Inc. story. A summary of the interview, by SBA press person Janice Kearney, is attached.

The story is scheduled to air on the ABC evening news this Friday (12/3).



S 020448

TO: Kathy McKiernan, White House Press Assistant
 From: Janis Kearney, Public Affairs, Small Business
 Administration
 RE: ABC interview
 Date: Dec. 1, 1993

Kathy, the following is a summary of the ABC interview which took place on Tuesday at the Small Business Administration. (Responses are paraphrased for brevity.)

The ABC reporter was Alan Frank of New York, representing Peter Jennings' World Nightly News show. Martin Teckler, our Deputy General Counsel was interviewed. Martin has served as the SBA spokesperson for this case throughout the duration and considered most well versed regarding the program.

The interview lasted approximately 45 minutes and, for the most part, centered around these main topics:

1. How does the SBA Small Business Investment Company (SBIC) program and Specialized Small Business Investment Company (SSBIC) work?

2. What is the status of SBA's involvement in Capital Management, Inc?

a. How much money is outstanding?

b. How does SBA go about reviewing this money?

c. How does SBA go about reviewing this money? What are the consequences of Master Marketing applying for loans for one purpose and using them for another purpose?

RE: We're not in a position to respond to speculation, we are now in the process of reviewing the files from Capital Management, Inc., which includes documentation on Master Marketing.

d. Are there other agencies involved? (FBI, Justice, etc.)

3. What do we know about Judge Hale's allegations regarding the former Governor of Arkansas and the current Governor? Did Judge Hale bring his allegations of the former Governor and the current Governor's involvement in this matter to SBA's attention?

RE: No, not to my knowledge.

4. Does SBA have any knowledge of Whitewater, Inc.

RE: The SBA has no knowledge of Whitewater.

5. What is the status of Castle Development or Castle Grande?

RE: The SBA has no knowledge of these...

6. How would Susan McDougal, wife of James McDougal who claimed to have been a millionaire, have qualified for a SSBIC?

■■■■■■■■■■
 S 020449

RE: SSBIC requirements are not based solely on economic status, her husband's financial status would not necessarily preclude her from qualifying for participation in the program.

7. Does SBA have any knowledge of the McDougal's relationship to the former Governor in regards to this case?

RE: The SBA has no knowledge of such a relationship.

Notes: Mr. Frank made it clear that our interview would be only a miniscule part of the story to be aired (probably Friday.) They also mentioned the fact that they would be in Arkansas to interview others for the story (did not identify who.)

Kathy, Martin Teckler made it abundantly clear that the SBA has no knowledge whatsoever regarding Mr. Hale's allegations and that our only interest is in collecting the SBA's and the taxpayers' monies that is still outstanding with Capital Management, Inc.

cc: Erskine
Cassandra
Katie

S 020450

Memorandum



To : SAC, LITTLE ROCK (86A-LR-34847)

Date 10/1/93

From : SSA STEVEN D. IRONS

Subject: THOMAS W. ANDERSON;
 ET AL;
 FAG-SBA
 OO: LITTLE ROCK

On 9/28/93, writer had a telephonic conversation with CECILIA SEAY, attorney for the Small Business Administration (SBA) in the matter involving DAVID HALE. SEAY advised she was still attempting to obtain all of the records of HALE's SBA company and needed a list from the FBI of what was missing from the records SBA turned over to the Bureau. SEAY intends to interview or depose HALE, and continue to demand all records.

Writer mentioned the media reports of SBA spokesman TECHLER's comments concerning the case and noted TECHLER was not helping matters by stating certain activities were not criminal in nature when he did not have all of the facts. SEAY advised she had spoken to SBA in Washington (possibly MARK STEVENS), and understood officials from the WHITE HOUSE had urged SBA to make such a characterization due to the mention of WHITEWATER DEVELOPMENT in some news accounts and WHITE HOUSE desire to avoid any inference criminal activity could have occurred in relation to WHITEWATER DEVELOPMENT and HALE's company.

SDI/sdi
 (2)

OIC 001030

1*

86A LR 34847-100

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 6 1993	
FBI - LITTLE ROCK	

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, FEBRUARY 22, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:20 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Mr. Ickes, if you have a statement, we'll be pleased to receive it.

SWORN TESTIMONY OF HAROLD M. ICKES WHITE HOUSE DEPUTY CHIEF OF STAFF

Mr. ICKES. I do not, Mr. Chairman.

The CHAIRMAN. I have a brief statement.

I find it unacceptable to have a pattern which I can only describe as unacceptable where the White House and its chief aides continue a pattern that is certainly contemptuous of good procedure, that borders on deliberate withholding of information or, at the very least, total and ineffectual efforts to attempt to be cooperative. It is one or the other.

Just the other day, we read—as a matter of fact today in the Washington Post—that it was only 18 months after the Senate investigation and 2 years after the Independent Counsel was named that the White House has finally put together a team to ensure compliance with subpoenas.

I would note for the record that the Treasury Department did what should have been done, sent in IRS investigators to go through the files of those people who may have had materials that have been requested.

If this isn't a deliberate pattern of evasion, then it's certainly an attitude of disdain.

Let's look at just some of the materials that we have received. And I have to tell you that it seems to me that when we speak about all the key members of the Whitewater Response Team, that I cannot believe that they have turned over to us information that they still have and it keeps dribbling in. Then we're met with lame

excuses in terms of how they found it. You don't find something if you don't look for it. There wasn't a conscious effort.

We received this packet of information from Mr. Gearan on January 29th! Another packet of information, again from Mr. Gearan was received on February 7th. Here's another packet of information. I might mention this information certainly was subpoenaed back in October from Mr. Altman, another White House official on February 13th. That's just 10 days ago. There's another file, another packet of information we received 2 nights ago.

Now who's playing politics? Who's deciding to withhold what?

This is information that is directly related to Whitewater and indeed we find, in a deposition given last evening to Mr. Waldman, one of the members of the Whitewater Response Team, that you, Mr. Ickes, I understand put together, he says that he found this last batch of papers. I have to tell you, I don't know, and I have reason to believe that this isn't everything. I don't believe it's everything. Not in the way this thing has been withheld.

Guess where he said he found it? They were in the White House office for months in a file marked WWDC, that's a quote, "WWDC," and Mr. Waldman admitted that stands for Whitewater Development Corporation. We should have had these papers and this information months ago. It's inexcusable.

The first place that the counsel should have gone to, you certainly knew there was a Whitewater Development Response Team, was to those people who were part of that team, the key members and said to them: "What documents do you have? Let's get them out." That's reasonable.

You can't tell the American people and attempt to say, "well, you are just dragging this out," when, in fact, the very people who should have been working, should have been complying, should have been providing information have failed to do so. And this is a pattern, over and over and over.

The electronic mail, the same thing. Delay. Delay. Delay. We will be asking for an extension, and it is necessary, and we are going to get the facts. And if those facts are exculpatory, indeed, if they clear the mystery away and demonstrate that things were done appropriately, fine. That will be the finding of this Committee.

But by gosh, you just cannot withhold things, tell us that we are wasting time, that we are spending taxpayers' money inappropriately when the very people who are charged and who say that they are going to meet the Committee's legitimate requests for information and documents deliberately withhold them. If you don't deliberately withhold them, then you do it in such a manner and conduct a search in such a way it is again arrogance, and is not a bona fide attempt to meet the Committee's legitimate requests.

I have to say that I am deeply shocked at this and that it doesn't surprise me anymore. But it is wrong. It is wrong. It is wrong again to have the political spin doctors attack the Committee and its integrity for attempting to do what we were charged with, and that is to gather the facts. To gather the facts and to get the information and let the chips fall where they may. We are going to continue to pursue it, but it's not right. We have not been dealt with fairly, and the American people have not been dealt with fairly.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I think it's important for the Committee to get all the material that's relevant to its inquiry. Whether it's reasonable to make charges about deliberate withholding I have very large questions. I mean, we can get from each person an explanation as to why the documents that were provided were not provided sooner. Mr. Gearan was here and we went into it in some detail with him, and it seemed to me that he had a reasonable explanation why the documents had not come. And once they were discovered, he provided them as promptly as he could.

It's also I think instructive to look at what the material provides once it's gets here, the substance of it. I have not, in any of it, as yet found any so-called smoking gun. But I think before one leaps to conclusions, we should explore with each the basis on which the material was not provided sooner.

We did that with Mr. Gearan who had, I thought, quite a reasonable and plausible explanation. And I, for one, would not level at him a charge of deliberate withholding of material.

But I think the Committee can move along. I think the important thing is that we're getting this material. None of it has been removed from the Committee's reach. We continue, I assume, the process of obtaining it and carrying out these hearings, hopefully in a fair manner.

The CHAIRMAN. Senator Hatch, Senator Faircloth, if you have no statements, I'll go to Mr. Chertoff.

Senator FAIRCLOTH. I do not have a statement.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Ickes, you are Deputy Chief of Staff at the White House?

Mr. ICKES. I am.

Mr. CHERTOFF. When did you first take that position?

Mr. ICKES. In very early January 1994.

Mr. CHERTOFF. And it is also true that in very early January 1994, you, I guess, became the chair of what you have described as the Whitewater Response Team?

Mr. ICKES. I wouldn't call it the chair. I was asked by then-Chief of Staff, Mack McLarty, to put together a group of people who were informed about Whitewater and related matters. We were getting deluged by the press with many, many questions. There were a number of people who were answering those questions and he wanted to make sure that we were getting information so that we could respond to the press as quickly and as accurately and as timely as possible.

Mr. CHERTOFF. Now, Mr. Ickes, you still have responsibility for Whitewater matters in the White House; is that correct?

Mr. ICKES. That's correct.

Mr. CHERTOFF. Ms. Sherburne reports to you?

Mr. ICKES. Ms. Sherburne reports to me, yes.

Mr. CHERTOFF. Who do you report to on Whitewater matters?

Mr. ICKES. I report to the Chief of Staff.

Mr. CHERTOFF. Anybody else?

Mr. ICKES. No.

Mr. CHERTOFF. You do not report to the President or the First Lady directly?

Mr. ICKES. Mr. Chertoff, everyone in the White House reports to the President.

Mr. CHERTOFF. I mean directly. Do you directly report to the President and the First Lady on Whitewater matters?

Mr. ICKES. I directly report to the Chief of Staff, Mr. Chertoff.

Mr. CHERTOFF. You do not directly report to the President and the First Lady?

Mr. ICKES. I don't know what you mean by the phrase. I directly report to my immediate superior, my immediate superior, Mr. Chertoff. I'm trying to answer the question. My immediate superior is Mr. Panetta and I report directly to Mr. Panetta.

Mr. CHERTOFF. Do you talk to the President about Whitewater matters?

Mr. ICKES. I do on occasion.

Mr. CHERTOFF. Do you talk to the First Lady about Whitewater matters?

Mr. ICKES. On rare occasion, yes.

Mr. CHERTOFF. I want to direct your attention to the early part of 1994, particularly February. And I want to remind you where it is in the context of events, because you were before the Banking Committee 2 years ago testifying about a February 2nd meeting at which you were present, in which Roger Altman had discussions with Mr. Nussbaum and others in the White House staff concerning whether or not he should recuse himself, take himself out of the decisionmaking process on the RTC's investigation of Madison and Whitewater.

Now later that month, did you have discussions with the President concerning the question of the possible exposure that the President and Mrs. Clinton might have with respect to an RTC investigation of the Rose Law Firm?

Mr. ICKES. Are you reading from testimony that I've given, Mr. Chertoff? If so, I would like to see it.

Mr. CHERTOFF. No. I'm asking you a question, Mr. Ickes.

Mr. ICKES. Are you reading from testimony, Mr. Chertoff, because if you are, I would like to see it.

The CHAIRMAN. Mr. Ickes, we ask the questions, all right?

Mr. ICKES. Well, Mr. Chairman, it's proper to inquire.

The CHAIRMAN. Now wait a second.

Mr. ICKES. It's proper to inquire, Mr. Chairman.

The CHAIRMAN. He's making an inquiry. If you don't recall, you can say you don't recall. If we have information that will be helpful in refreshing your recollection, we will make it available to you. Now he's asking you a question. So let's go.

Mr. ICKES. As I understand it, Mr. Chairman—

The CHAIRMAN. I will ask that the question be rephrased, and I am going to ask the witness to attempt to be responsive.

Mr. ICKES. I am attempting to be responsive, Mr. Chairman.

The CHAIRMAN. Well, I can say already that I've seen a number of instances when it would appear fairly obvious that Mr. Chertoff had to ask the question two or three times to get a response as it related to whether you communicated with the President with respect to Whitewater.

Mr. ICKES. Mr. Chairman, he used the word "report"—

The CHAIRMAN. Mr. Ickes, you may be Deputy Chief of the White House and you give orders there, and we will be fair, but you must try to be responsive.

Mr. ICKES. I'm trying to do that, Mr. Chairman.

The CHAIRMAN. Please, Mr. Ickes, try to respond to the questions. Be responsive. No trick questions. If you recall, please answer. If you don't, say you don't recall.

Now go ahead, Mr. Chertoff.

Mr. CHERTOFF. My question to you, Mr. Ickes, is in late February 1994, did you have conversations with the President of the United States concerning whether he and/or the First Lady faced possible exposure relating to an RTC investigation into the activities of the Rose Law Firm?

Mr. ICKES. I think I've testified before, at least twice, if not three times, Mr. Chertoff, that I did have conversations. I wouldn't say they were about exposure. And I do not recall at what time I had those conversations, when I had those conversations, where I had those conversations, or whom was present.

Mr. CHERTOFF. Isn't it a fact, Mr. Ickes, that the President of the United States repeatedly asked you whether he and the First Lady faced possible liability or were exposed to possible liability for an RTC investigation into the activities of the Rose Law Firm?

Mr. ICKES. Not that I recall, Mr. Chertoff.

Mr. CHERTOFF. Were you interviewed by the White House Counsel's Office in the summer of 1994 in connection with what the White House has described as a review that they were conducting about White House-Treasury contacts?

Mr. ICKES. I don't recall the time of year. I think it was some time during the spring or summer, but I was interviewed by some people on Lloyd Cutler's staff. Lloyd Cutler was at that point the White House Counsel.

Mr. CHERTOFF. Did that include Ms. Sherburne? Did she interview you?

Mr. ICKES. As I recall, it did.

Mr. CHERTOFF. Was Ms. Cheston also present at the interview?

Mr. ICKES. I recall that she was in an interview. I think both of them were in an interview at some point.

Mr. CHERTOFF. Did you also direct your attorney to communicate with them and tell them information you had in your possession that was relevant to what they were examining?

Mr. ICKES. I am not sure I directed my attorney to meet with them.

Mr. CHERTOFF. Well, I am going to put up on the Elmo two sets of notes. The first set of notes is 20783 and 20784, which are Ms. Sherburne's notes. And there's a copy before you.

Senator DODD. Do we have copies of those?

Mr. CHERTOFF. Everybody has copies, I believe. It's on one sheet of paper and it carries over. This is a portion of a series of notes.

The CHAIRMAN. Let him find it first. Do you see that number over there up at the top? That will identify and generally they're sequential. That's 20783.

Mr. ICKES. Yes, these aren't. This starts with 20564, then it goes to 1-2—

The CHAIRMAN. Go ahead. You're going up to 83.

Mr. CHERTOFF. This is from the notes that Ms. Sherburne had concerning the information she gathered from you relating to this issue in the summer of 1994. It says: "Late February (2/26 or 27), HI"—that's you, Harold Ickes—"has conversation with WJC"—that's the President—"in which WJC asks lots of questions re RTC procedures, whether HRC and WJC exposed." Then off in the corner in says, "Whether Rose could be held liable." Does that ring a bell with you?

Mr. ICKES. I was not present at this. My understanding of these notes, Mr. Chertoff, is that these were notes written by Jane Sherburne after a conversation with somebody else. I was not present there. I don't know the context, I don't know the nature of the question. All I can tell you is she wrote what she wrote.

Mr. CHERTOFF. My question to you is, Mr. Ickes, is it true? Is it true that you had conversations in late February with the President in which the President asked lots of questions regarding RTC procedures, whether HRC and WJC were exposed? Is that true?

Mr. ICKES. I have testified before on several occasions, Mr. Chertoff, that I did have conversations with the President and separately with the First Lady. I don't know whether they were during February 1994, or during March 1994.

Mr. CHERTOFF. Whether February or March, put the date to one side. Did you have conversations with the President in which the President asked you lots of questions about RTC procedures, whether Mrs. Clinton and the President were exposed?

Mr. ICKES. I do not recall lots of questions. I recall having a meeting, several meetings with the President in which I had some discussions with him. I've testified to that before.

Mr. CHERTOFF. You actually haven't, Mr. Ickes.

Mr. ICKES. Mr. Chertoff, please. And my testimony stands.

Mr. CHERTOFF. Well, we'll get to your prior testimony.

Are you telling us that this statement is true or untrue, this statement in the notes? Did you have these conversations or not?

Mr. ICKES. To the best of my recollection, Mr. Chertoff, I have testified before and I testify again today that I had question—I had several meetings with the President during this period of time, February and March. I do not recall when the meetings occurred nor do I recall the substance of the conversations.

Mr. CHERTOFF. Now it goes on to say in the notes, "HI," that's you, "asked NE," Neal Eggleston, "to draft memo which NE did in 12 hours. HI made revisions. Sends to HRC 3/1. DR discussing." Did you ask Mr. Eggleston to draft a memo regarding the question of RTC procedures in response to these questions?

Mr. ICKES. I may well have, Mr. Chertoff. I think that that memorandum has been again testified to at considerable length. If you would show it to me, I could answer more appropriately.

The CHAIRMAN. We are not asking you to tell us that we have seen the memo. We are asking you to answer the question.

Mr. ICKES. I have been answering.

The CHAIRMAN. You are not answering the questions. You are not being responsive.

Mr. ICKES. Mr. Chairman, you may not like the answers but I am answering the question, and I am trying to be as responsive as possible.

The CHAIRMAN. Well, we will be here. We are going to get more responsive answers.

Mr. CHERTOFF. Did you ask Mr. Eggleston to prepare a memo regarding RTC procedures in response to these conversations with the President?

Mr. ICKES. I think I've testified to that before that I did ask him to prepare a memo.

Mr. CHERTOFF. Did you ask him to prepare a memo—let me put the memo up. It's S 7288. And I'm going to show you—

Mr. ICKES. Do I have a copy of that here, Mr. Chertoff?

Mr. CHERTOFF. Yes, Mr. Ickes, you have a copy of everything before you. And if we can stop the clock and give the witness an opportunity to find it, so we don't lose time.

I'll also direct your attention to X 1200 which is a redacted form of the same memo which the Committee originally received in 1994 before we finally got the full version.

Mr. ICKES. The memo you are referring to is the one dated January 17, 1994?

Mr. CHERTOFF. No, it is dated 1 March 1994, to the First Lady from Harold Ickes.

Mr. ICKES. OK, I have it. I have it.

Mr. CHERTOFF. There are two versions of that. One is redacted and one is unredacted.

Mr. ICKES. I have one here, Mr. Chertoff, that's 7288.

Mr. CHERTOFF. That's right, and there is another one X 1200, which you also have before you.

Mr. ICKES. Right, I have that also.

Mr. CHERTOFF. And X 1200 is the redacted form of S 7288, which is what we originally had before the White House finally, we finally arranged to get the entirety of the document.

Mr. ICKES. That's correct.

Mr. CHERTOFF. You had Mr. Eggleston draft this document, that is to say, the underlying memorandum that is beneath the transmittal page. Isn't that correct?

Mr. ICKES. And you are talking about the February 28th memorandum.

Mr. CHERTOFF. Correct.

Mr. ICKES. Yes, it's my recollection I did ask him to draft it.

Mr. CHERTOFF. Now when you were asked about that in your deposition—I'm going to give you a copy of your deposition—well, you actually have it. Why don't you turn to page 192? You didn't tell us about this?

The CHAIRMAN. Let him get to page 192 and take a look at it.

Mr. ICKES. Page 192 of?

Mr. CHERTOFF. Of your deposition before the Senate Banking Committee.

Mr. ICKES. I'm not sure I see it here, Mr. Chertoff.

Mr. CHERTOFF. It's there.

The CHAIRMAN. We'll provide it—

Mr. ICKES. No, no. I'm—just bear with me.

The CHAIRMAN. It's up on the screen also.

Mr. CHERTOFF. Mr. Ickes—

The CHAIRMAN. Now wait, let him get there. Page 192?

Mr. ICKES. OK, I've got it. I've got—yes.

Mr. CHERTOFF. Of your deposition testimony given on July 24, 1994, and you were being questioned by Mr. Codinha, who was Mr. Ben-Veniste's predecessor, who was then the Majority Counsel on the Democratic side. He asked you specifically about this memorandum and the 25-page attachment. He asked you at line 16:

Question: Do you recall creating a memo on or around March 1st, which was a confidential memo for the First Lady of the United States that dealt with the Resolution Trust Corporation?

Mr. ICKES. What line are you on? I'm sorry. What line?

Mr. CHERTOFF. Line 16.

Mr. ICKES. Line 16 on page 192?

Mr. CHERTOFF. Correct. Of your deposition testimony.

Mr. ICKES. I'm with you.

Mr. CHERTOFF. At line 16:

Question: Do you recall creating a memo on or around March 1st, which was a confidential memo for the First Lady of the United States that dealt with the Resolution Trust Corporation?

Answer: I may have. I don't recall the specifics.

Then Mr. Codinha went on to show you X 1202, which if you look at X1200 is attached, and that is the redacted version of the memo we've been talking about.

Mr. ICKES. Yes.

Mr. CHERTOFF. And if we continue on the next page, which would be page 193, at line 14:

Question: Does that refresh your memory as to whether at least a draft of such a document was created?

Answer: As I sit here today, I don't recall specifically creating a draft, but this certainly appears to be a draft.

Question: Do you know the purpose, why such a memorandum would be created?

Answer: Assuming it was created and assuming it was, in fact, sent to the First Lady, I think the purpose was to inform her about what was stated in the body of the memo.

Then Mr. Codinha directs your attention to the fact that the memo was heavily redacted.

Mr. ICKES. Right.

Mr. CHERTOFF. Go on to the next page, actually we'll start at 195 at line 14. Mr. Codinha says:

Question: That's X1201 and does that indicate it says "redacted 25 pages"?

Answer: It does.

Question: Does that indicate to you this is a heavily redacted document?

Mr. BENNETT: It speaks for itself.

Question: Do you recall writing 25 pages on the subject of the Resolution Trust Corporation to the First Lady?

Answer: I do not and I doubt that I did.

This is important, now. This is line 2, page 196.

Question: When you say you doubt that you did, do you believe that someone else acting on your instructions wrote a 25-page memo?

Answer: It's hard for me to tell since you say it's heavily redacted. There's a blank page, other than the word "redacted" and the handwritten page, "25 pages."

Finally to page 197, you continue to go back and forth with Mr. Codinha, this is at line 8:

Question: First of all, how can you determine from looking at the page that it is a transmittal memorandum?

Answer: You're exactly right, I can't. And the only reason I said that is because this was attached to it—

Question: This being X1201 which is redacted 25 pages?

Answer: Yes. And I assume, and probably incorrectly, that this 1201 was attached to 1200. Therefore, I concluded it was a transmittal memorandum and I'm in error. I don't know whether it was or wasn't.

Now my question to you, Mr. Ickes, is this. At the time you were shown this redacted memorandum, that was just around the time you had told someone and had communicated to Ms. Sherburne the fact that you had directed Mr. Eggleston to draft the memorandum which you later transmitted up to the First Lady under the title Resolution Trust Corporation.

Isn't it a fact, Mr. Ickes, that when you were confronted with this memo, even though it was heavily redacted, you were able to determine from the cover page, which is X1202 entitled, "To: The First Lady; From: Harold Ickes; Re: Resolution Trust Corporation;" that you knew then and there that you had prepared that transmittal memo and that you had sent Mrs. Clinton a 25-page memo on the Resolution Trust Corporation because you knew you had asked Mr. Eggleston to prepare it, and you knew you had made revisions in it, and you knew you had sent it up to the First Lady?

Mr. ICKES. I think, Mr. Chertoff, that the deposition referred to documents that were heavily redacted, and therefore it was unclear to me what the documents were involved.

Mr. CHERTOFF. But even with the redaction, Mr. Ickes, even with the meager amount of information we received from the White House back in July 1994, we did have and you were shown this. You were shown X1202, put it up on the Elmo, it was entitled, "Memorandum—To: The First Lady, From: Harold Ickes, Re: The Resolution Trust Corporation" and that is, in fact, when you finally looked at the whole memo, that is the cover sheet you used to transmit the entirety of Mr. Eggleston's memo to the First Lady.

At the same time you were telling Mr. Codinha that you didn't know what this was in relation to, you were telling people who were asking you questions at the White House or who were conveying your information to the White House, that, in fact, you specifically remembered having directed Mr. Eggleston to prepare that memorandum.

Mr. ICKES. Mr. Chairman, is that a question? I mean, that's a statement by Counsel.

Mr. CHERTOFF. I'm about to get to the question.

Mr. ICKES. Well, I know, but let's ask the question.

The CHAIRMAN. He's setting the stage.

Mr. ICKES. Mr. Chairman, in all fairness, he's using—I mean, ask the questions. That's an editorial comment by Counsel. He's concluding.

The CHAIRMAN. Mr. Ickes—

Mr. CHERTOFF. Did you tell—

Mr. ICKES. As far as I know, the Members of this Committee are going to draw conclusions.

The CHAIRMAN. Right.

Mr. CHERTOFF. Mr. Ickes, is it, in fact, the case that you told people in the spring or the summer of 1994, that you recalled asking Neal Eggleston to draft a memo about the RTC procedures, which he did in 12 hours, that you made revisions in the memo, that you sent it to Mrs. Clinton, and that Mrs. Clinton asked a few questions about it?

Mr. ICKES. Mr. Chertoff, the responses that I gave in the deposition were responses that were referring to a specific piece of paper that was put in front of me.

Mr. CHERTOFF. Mr. Ickes, my question is this. Did you tell people, did you tell anyone in the spring or summer of 1994 that you had directed Mr. Eggleston to draft a memo, which he did in 12 hours, relating to RTC procedures, that you made revisions in the memo, and that you sent it to Mrs. Clinton?

Mr. ICKES. I may well have, Mr. Chertoff. But that was in connection with documents that we're being shown to me at the time.

Mr. CHERTOFF. In fact, the documents that were being shown to you were the complete versions of what the Committee was given in a heavily redacted form? And if you want to compare the redacted memo 1202 with the complete memo 7288, you look at those two pages, you will agree with me, will you not, that, in fact, 1202 is simply a redacted or edited version of 7288?

Mr. ICKES. Mr. Chertoff, there are a lot of memos back and forth.

Mr. CHERTOFF. You compare them—

Mr. ICKES. Let me just finish, Mr. Chertoff. There are a lot of memos back and forth, and when I am under oath, as I was when I was taking—that deposition was being taken of me, I was responding specifically to the documents that were put in front of me.

Mr. CHERTOFF. Again, Mr. Ickes, my question is this. Would you compare X1202, the redacted version you were shown in the deposition, and the complete version, 7288, and will you agree with me that 1202 is, in fact, a redacted portion or an edited portion of what is the full memo?

Mr. ICKES. Upon comparison, I wouldn't disagree with you. However, Mr. Chertoff, I was not shown that during my deposition.

Mr. CHERTOFF. But had you been shown the full memo at any other time before your deposition?

Mr. ICKES. I may well have. I don't recall.

Mr. CHERTOFF. Now, I want to direct your attention to the notes which have recently been produced to us. In particular, I want to direct your attention to your notes, page S 2790.

Senator DODD. Mr. Chairman, while he is looking at that, can I inquire, when did we receive the full unredacted memo?

Mr. CHERTOFF. I think the full unredacted memo, as I recall, Mr. Chairman, was presented to the then-Chairman and Minority Member on, I believe, the next-to-last day of the hearing.

The CHAIRMAN. During the summer, I think, we had a meeting with Ms. Sherburne and then-Counsel to the White House and arranged for the full unredacted, or very lightly redacted portion to be produced.

Senator DODD. Is that like the end of July?

Mr. CHERTOFF. It was August.

The CHAIRMAN. Was it August? July 29th.

Senator DODD. Of 1994.

Senator SARBANES. 1994.

Senator DODD. So we had the full document then in July 1994?

Mr. CHERTOFF. We did not have it, Mr. Chairman, during the deposition.

The CHAIRMAN. Yes. The point is though that it was withheld, or we didn't have it, and there was no agreement until late July when we agreed that we would—

Senator DODD. No, my point was, I think Mr. Ickes testified on August 4th, and we had the document prior to his testimony.

Mr. CHERTOFF. I believe, Mr. Chairman, to be absolutely clear on the record, the deposition testimony, including the questions by Mr. Codinha, then the Democratic Counsel, was on July 24th. We did not receive the full memorandum, the unredacted memorandum until the hearings were underway, which was several days thereafter. We did not receive Ms. Sherburne's record of what Mr. Ickes knew until it was shown to us within the last couple of months.

Now, Mr. Ickes, I want to direct your attention to S20790. These are notes of a meeting regarding Whitewater in your handwriting.

Mr. ICKES. Here's the problem, Mr. Chertoff. The documents that I was given to you by—given to me by your staff are not in order, so—

Mr. CHERTOFF. We'll send someone down then to—

Mr. ICKES. That's all right. They're in my handwriting?

Mr. CHERTOFF. They are in your handwriting.

Mr. ICKES. And what date are they?

Mr. CHERTOFF. 1/16/94.

Mr. ICKES. OK, I have those.

Mr. CHERTOFF. The first page of the notes is S20790; correct?

Mr. ICKES. That's correct.

Mr. CHERTOFF. Now it says under Arabic numeral 2, "Statute of Limitations," is that correct?

Mr. ICKES. Yes.

Mr. CHERTOFF. Where were these notes before they were produced to this Committee? Were they in your possession?

Mr. ICKES. They were in my possession, yes.

Mr. CHERTOFF. Were they in your possession continuously from January 1994, until you produced them to the White House Counsel to be produced within the last week?

Mr. ICKES. Yes, they were in my files.

Mr. CHERTOFF. You had them available to review in 1994?

Mr. ICKES. Well, as I recall, as I understand it, these had been produced to the White House Counsel pursuant to the subpoena that was issued by the Independent Counsel or then-Special Counsel Fiske in early March 1994.

I'm confident that these particular notes that you're referring to had been produced to the White House Counsel and it's my understanding that the White House Counsel overlooked producing them pursuant to subsequent subpoenas that this Committee issued.

Mr. CHERTOFF. And you reviewed these documents before they were produced to Mr. Fiske; is that correct?

Mr. ICKES. I turned the documents over and let the White House Counsel and my attorneys determine what was responsive and what was not responsive.

Mr. CHERTOFF. You reviewed these notes, the notes that were produced to Mr. Fiske, before they were produced, correct?

Mr. ICKES. Again, Mr. Chertoff, I don't want to quibble with you. I don't know what the term "review" means. Did I glance at them as I turned them over? Yes. Did I read them? I doubt it.

Mr. CHERTOFF. Well, let's go to page 231 of your deposition on July 24, 1994.

Mr. ICKES. I'm sorry, what page?

Mr. CHERTOFF. 2-3-1, 231.

Mr. ICKES. OK. I'm there.

Mr. CHERTOFF. Have it?

Mr. ICKES. Yes, I do.

Mr. CHERTOFF. At line 4:

Question: Did you review those notes before you made a production to Mr. Fiske?

Answer: I did.

Question: Did you review those notes before production was made here?

Answer: Yes.

Were those your answers to the questions that I put to you back in 1994?

Mr. ICKES. Yes, it was, but again there's a question about what review means.

Mr. CHERTOFF. Well, did you have a question, do you see anywhere in that answer there, a qualification or an expression of uncertainty about what the word "review" means?

Mr. ICKES. The word "review," Mr. Chertoff, can mean many things. I glanced at these documents, and basically I turned whatever documents——

The CHAIRMAN. Mr. Ickes, you didn't say in your testimony there that you glanced at the documents. You answered that you did review them before you gave them to Mr. Fiske. You said that you reviewed them again before your examination.

Let's go, Counsel.

Mr. CHERTOFF. Now, I want to continue with the deposition.

The CHAIRMAN. If you want to have a discussion on the word "review," we're not going to spend——

Mr. ICKES. Mr. Chairman, if I could finish my——

The CHAIRMAN. We're not going to spend——

Mr. ICKES. Mr. Chairman, if I could finish my answer.

The CHAIRMAN. We are not going to spend 30 minutes on your interpretation of what review means.

Mr. ICKES. Mr. Chairman, if I could finish my answer to Mr. Chertoff, I'd appreciate it.

The CHAIRMAN. Well, go ahead, try to be responsive.

Mr. ICKES. I thought that you all asked me to come up here to answer questions, and I'm trying to do that.

The CHAIRMAN. And not give speeches, and not beat around the bush, and not tell us what you testified to previously. We are trying to get straightforward answers from you. When he asks you whether you reviewed, give us an answer. Yes or no?

Mr. ICKES. Mr. Chairman——

The CHAIRMAN. Yes?

Mr. ICKES. Mr. Chairman, I was cut off in the middle of a question.

The CHAIRMAN. OK, go ahead.

Mr. ICKES. I'd like to finish my answer if I could.

The CHAIRMAN. I'd like to see you try to do it.

Mr. ICKES. All right.

[Laughter.]

I'd like to be given a chance.

Mr. Chertoff, when that subpoena was issued by Mr. Fiske in early March 1994, as I recall, I pulled out all of the documents that I thought were responsive. Indeed, I was overly responsive to that subpoena. I turned them over to my counsel and to White House Counsel. They then determined what was responsive to the subpoena. When I say I reviewed them in this testimony, I merely glanced at them. I did not read them.

Mr. CHERTOFF. I'll tell you what, Mr. Ickes, we're just going to go over what's in the record which is as it stands. The question to you was did you review those notes before you made a production to Mr. Fiske. And your answer is, I did. Is that correct?

Mr. ICKES. That's correct.

Mr. CHERTOFF. That's what's written there; right?

Mr. ICKES. Yes.

Mr. CHERTOFF. You had an opportunity, Mr. Ickes——

Senator SARBANES. Wait a minute. Why don't we back off and ask the previous question.

The CHAIRMAN. Senator, you can do that on your time.

Senator SARBANES. I mean, you have a question what was the content of those notes, and he says, I have no idea, I have to look this up. Did you review those notes before you made the production? I did, but he's already said he didn't know the content.

The CHAIRMAN. Senator, if you want to testify for him, you can do that.

Senator SARBANES. This is not Constitutional.

The CHAIRMAN. Oh, come on now, let's cut that out. Seriously.

All right, we'll go back right from the top of the page and start.

Mr. CHERTOFF. This is the question. I will go back to line 2.

Question: And what was the content of those notes?

Answer: I have no idea, I'd have to look that up.

Question: Did you review those notes before you made a production to Mr. Fiske?

Answer: I did.

Question: Did you review those notes before production was made here?

Answer: Yes.

Now, Mr. Ickes, you had an opportunity actually to make corrections in the deposition, didn't you?

Mr. ICKES. As I recall, I did.

Mr. CHERTOFF. Do you have reason to believe that the printed record of your answers is incorrect?

Mr. ICKES. I am not disputing the answer. I am disputing the interpretation of the word.

Mr. CHERTOFF. Now it goes on:

Question: Was there any mention in any of those notes of the words "statute of limitations"?

And then after we have some discussion with the lawyers, the question again is posed:

Question: Were there notes in the file in which the words "statute of limitations" appeared?

Mr. BENNETT: If he remembers.

The WITNESS: The word "statute of limitations"?

Question: Right.

Answer: I don't recall the words "statute of limitations," other than press clips.

Then Mr. Bennett interjects about the February 2nd note. And go on to ask you, at line 16:

Question: Excluding TS 1192 which is your February 2nd notes, excluding that, were there references to the statute of limitations in any of your other notes?

Answer: Not that I recall.

Now would you agree with me that your notes of January 16, 1994, which you have indicated to us were turned over to the White House Counsel to be produced to Mr. Fiske in March 1994, does in fact contain a discussion of the statute of limitations, and it's right there in your handwriting; correct?

Mr. ICKES. I've already testified to that. Yes, it does.

Mr. CHERTOFF. And you understood at the time that one of the issues that the Committee was looking at—this wasn't just, you know, playing scrabble, hunting for words, one of the issues was whether in January 1994, one of the considerations in the minds of the people at the White House who ultimately met with Roger Altman was an acute awareness of the fact that the statute of limitations on the RTC investigation of Madison and the Rose Law Firm was going to expire at the end of February unless there was an extension, and that that had a great deal of relevance to the discussions with Mr. Altman in terms of his recusal. Do you remember that being the issue that was on the table?

Mr. ICKES. I do. I remember a number of Senators up here talking about it at great length.

Mr. CHERTOFF. In fact, I want to ask you, Mr. Ickes, whether you have other notes about Whitewater response meetings because you took notes of Whitewater response meetings in January, 1994.

Mr. ICKES. The notes that I have, I've turned over.

Mr. CHERTOFF. Have you taken other notes?

Mr. ICKES. The only notes that I recall taking were the notes that were the basis for the typewritten notes that have been turned over to this Committee.

Mr. CHERTOFF. I'm going to ask the question again. I don't want to ask whether something was the basis for something. Did you take notes during Whitewater response meetings that are not in the documents that have been produced here today?

Mr. ICKES. The only notes that I recall taking, Mr. Chertoff, are those that are the basis for the typewritten notes that have been turned over to this Committee.

Mr. CHERTOFF. Where are the original notes?

Mr. ICKES. I do not know.

Mr. CHERTOFF. What happened to them?

Mr. ICKES. They may have been discarded, Mr. Chertoff. After those typewritten notes were typed up, there was no need for them.

Mr. CHERTOFF. Were the original notes turned over to Mr. Fiske?

Mr. ICKES. They were not.

Mr. CHERTOFF. Were they discarded in February 1994?

Mr. ICKES. I suspect that they were discarded right after the typewritten memos were typed.

Mr. CHERTOFF. Now the notes contain a description of what went on in the meetings? Is that what it is?

Mr. ICKES. The notes basically contained what is typed in those memos that have been turned over to this Committee.

Mr. CHERTOFF. Well, the memos we have don't cover every day in which there were meetings. I am correct, am I not, that there

were meetings during the first 2 weeks of January 1994, on a daily basis?

Mr. ICKES. That's correct.

Mr. CHERTOFF. Sometimes twice a day?

Mr. ICKES. Sometimes.

Mr. CHERTOFF. So that would suggest there should have been notes for somewhere between 7 and 14 sets of notes for those first 2 weeks; right?

Mr. ICKES. There's no suggestion that there should be any notes, Mr. Chertoff.

Mr. CHERTOFF. But you took notes, didn't you?

Mr. ICKES. I took notes of those documents that were then transcribed by a typewriter and were distributed to certain members of that group. They were actually assignment notes. That's what I was interested in.

Mr. CHERTOFF. Right. You had assignment notes. I think if you'll look in your production, you'll see assignment notes for January 9th and for January 10th. Are there any other typewritten versions of notes from these daily meetings over this 2-week period that you find in your production of documents?

Mr. ICKES. Not that I know of, Mr. Chertoff. I turned all of these, all of my files over to White House Counsel and to my own lawyer. Last week, they went through all of the files, and this is what has been produced.

Mr. CHERTOFF. The only handwritten notes—you saved these notes on January 16, 1994, though; right?

Mr. ICKES. What?

Mr. CHERTOFF. The January 16th notes in your own handwriting you saved; right?

Mr. ICKES. That was a much, that was a different meeting. That was not the Whitewater Response Group that you referred to.

Mr. CHERTOFF. Did you make a decision that with respect to Whitewater response meetings you would not save the notes, as opposed to keeping the notes of other meetings?

Mr. ICKES. No. There was no typewritten transcript of this, Mr. Chertoff. There was a typewritten transcript of the notes that I took in the Whitewater response meeting, and those typewritten notes have been turned over to this Committee.

Mr. CHERTOFF. Well, who made the typewritten transcript of the notes of the Whitewater response meetings?

Mr. ICKES. I don't recall. Somebody in my office.

Mr. CHERTOFF. Did you ask somebody to do it?

Mr. ICKES. Yes.

Mr. CHERTOFF. Are you telling us that the assignment lists for January 9th and January 10th, which are the only assignment lists we have received, that's the sum total of all the notes for those 2 weeks?

Mr. ICKES. All the notes that I have. Obviously others took notes.

Mr. CHERTOFF. But you only took notes on two occasions?

Mr. ICKES. What?

Mr. CHERTOFF. You only took notes on two occasions?

Mr. ICKES. That's right. My job was to coordinate the pulling together of information and make assignments. That is what I was

doing with that group, and that is what I was interested in, and that is what I was focused on.

Mr. CHERTOFF. Now just to close the loop on this, let's go back to your deposition on page 87, line 2.

Mr. ICKES. Wait just a moment, sir. This is page 87 of the deposition?

Mr. CHERTOFF. On July 24th, Mr. Codinha asking the questions.

Mr. ICKES. OK, I'm at 87.

Mr. CHERTOFF. Line 2:

Question: Did individuals take notes at those meetings, if you noticed?

Answer: Some individuals did.

Question: Did you take notes?

[Witness conferred with counsel.]

Answer: I kept notes.

Question: Would it be correct to say that if they pertain to the scope of Senate Resolution 229, that they have been delivered to the Committee?

Answer: Yes.

Question: And you have reviewed your notes yourself or along with your attorney?

Answer: I have.

Is that true? Did you review your notes of the Whitewater response meetings with your attorney?

Mr. ICKES. Again, I reviewed notes in the sense that I use review, Mr. Chertoff, that I looked at stuff and I turned it over to, I turned it over to my lawyer.

Mr. CHERTOFF. But here is the problem, Mr. Ickes, Mr. Codinha was really quite specific. He was asking you specifically about notes of the Whitewater Response Team meetings. Now you have just told us that all the notes of the Whitewater Response Team meetings were discarded because they were turned into typewritten assignment lists.

Whether review means glance, survey, interpret, or examine your testimony in 1994, was that you had reviewed notes of the Whitewater Response Team meetings with your attorney. That strongly suggests, Mr. Ickes, that you had notes of those meetings in your possession at a point in time, and you could sit down with your lawyer and look at them.

Mr. ICKES. Those notes, Mr. Chertoff, are on two or three or four typewritten pages which have been turned over to this Committee.

Mr. CHERTOFF. I see the only notes then that you're referring to here are a memorandum of January 9th with assignments and the memorandum of January 10th with assignments S2888 and 2889 and S2819 and 2820, those 4 pages?

Mr. ICKES. Yes.

Mr. CHERTOFF. That's it? That's all the notes you had of Whitewater Response Team meetings?

Mr. ICKES. That's correct.

Mr. CHERTOFF. When you said in your sworn deposition that you reviewed notes with your attorney, what you really meant was typed memoranda, not notes?

Mr. ICKES. Well, I didn't know that notes referred only to handwritten notes, Mr. Chertoff. You didn't make that clear that that's what you were referring to.

Mr. CHERTOFF. It was Mr. Codinha. All right, we'll resume.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. May I inquire? That was 35 minutes, 39 or 40 minutes.

The CHAIRMAN. Let me say this to you. We went about 2 minutes over, but when the witness looks for documents, we have made a practice of taking the clock off to give him an opportunity, so that's what the additional time is. We'll grant you certainly an additional 2 minutes.

Mr. BEN-VENISTE. So what is the time we have?

The CHAIRMAN. You have 32 minutes.

Senator SARBANES. Mr. Chairman, I think it makes for a more orderly procedure if we just adhere to the lights. I mean, that way we won't have this kind of discussion.

The CHAIRMAN. Well, I will to this extent. Mr. Chertoff continued for approximately 2 minutes after the red light went on. That was in an attempt to finish a particular line of questioning. I think it is not realistic for us to think that we're going to ask, particularly our colleagues, Senators, to stop a line of questioning when they are about to complete it within a few minutes. So we'll adhere to the light with that exception, we'll permit both sides that latitude. But we will attempt to stick as closely as we can to the lights.

Senator SARBANES. Well, I think that process carries abuse with it. I think we really ought to just adhere to the lights. That's what the Resolution provides for. That way we have no argument, we have no difference over the amount of time and so forth.

The CHAIRMAN. Senator, if you want to take responsibility, when the light goes on, for telling those Members on your side that their time is over, but I have not been too successful in dealing with my colleagues on either side because they generally say, "Well, if I might just be permitted to finish this question." So you can attempt to do that.

Senator SARBANES. Well, we have done that.

The CHAIRMAN. Yes, we have. We are really wasting a lot of time right now, and it's on your time, but I am going to attempt to hold us as closely as we can to the light, recognizing, as I have indicated, what I believe makes for an orderly hearing and also comity for both sides.

Senator SARBANES. Speaking of comity, we'll take it off our time, Mr. Chairman, this discussion.

The CHAIRMAN. OK. I thank my friend.

Mr. BEN-VENISTE. Mr. Ickes, let me start with, I guess a minor point, which is whether, as a normal practice, you keep every scrap of paper that you have written during the time that you have been at the White House?

Mr. ICKES. I don't think there was enough room to keep every scrap of paper that one generates at the White House, Mr. Ben-Veniste.

Mr. BEN-VENISTE. So you've indicated that with respect to notes that were transcribed from handwriting, and I happen to have been among those that have tried to decipher your handwriting, and I applaud the occasions when those notes were transcribed—

Mr. ICKES. Good luck.

Mr. BEN-VENISTE. —that once they were reduced to typewritten form, you saw no need to keep as historical relics the handwritten notes from which the typewritten pages were made?

Mr. ICKES. I mean, once the typewritten—I cross-checked them against my notes. They were accurate. And I don't know if they were thrown away or not but there was no need for them.

Mr. BEN-VENISTE. When you refer to notes in general, does that encompass both handwritten and typed notes?

Mr. ICKES. Certainly in my mind it does.

Mr. BEN-VENISTE. OK. Let me get first to the question of process. If I understand your testimony heretofore correctly, there were notes which were turned over to White House Counsel's Office that were for the reasons set forth in Ms. Sherburne's letter to this Committee, not produced in a timely fashion. Is that correct?

Mr. ICKES. Yes.

Mr. BEN-VENISTE. Similarly, with respect to other notes which have been produced recently by you, those additional notes were in your possession, but through inadvertence were not turned over?

Mr. ICKES. They were, Mr. Ben-Veniste. If I may be permitted to give you a short explanation? When Mr. Fiske's subpoena was served on the White House, I reviewed, I went through all of my files, and as I recall I was overly inclusive in giving documents to White House Counsel and to my own counsel, to let them make a decision as to whether or not a particular document was responsive to the so-called Fiske subpoena.

I was under a misimpression, as the year wore on, that I had turned over all of my documents relating to Whitewater to them for review. It turns out that the documents that had been delivered to this Committee, I guess yesterday or day before yesterday, there were a bunch of those documents, I think 114 pages or so, of which 54 pages or so had already been turned over by other means to this Committee. But none of those documents, with the exception of the handwritten notes of Mrs. Clinton's press conference in April, none of those documents were dated after the Fiske subpoena.

It was inadvertent on my part. There was no attempt whatsoever to hide anything, to keep anything back from this Committee. I think if you look at the substance of those documents, there's nothing of critical importance in there. Obviously, this Committee has a right to have those documents. I made a mistake and I apologize to the Committee for that. But the fact of the matter is this White House has made every attempt exceeded by no White House in the history of the Republic to cooperate with this Committee, with House Committees, with independent prosecutors. We have turned over 14,000 some pages of documents I'm told to this Committee alone. We've turned over 50,000 to 60,000 documents in total to various committees and the Independent Counsel. We are not hiding anything.

This President made a decision early on to have as open and as much cooperation as possible, and I think it is fair to say, and that the historical record will show that there has not been a White House that has been more cooperative than this White House.

I would just refer you, Mr. Ben-Veniste, to an article written on Sunday, January 28, 1986, by Beth Nolan and John Podesta, in which a diary of then-President Bush was sought, and it was requested, apparently it was included in the framework of a request that was issued in 1987, was found in September 1992, but was not

turned over to the appropriate Independent Counsel until December 1992. That's approximately——

Mr. BEN-VENISTE. Well, I think we have already reviewed that article and that fact situation, so let me focus really on the situation, if I may, before us today, Mr. Ickes.

With respect to the production of documents the day before yesterday, that was a compendium of documents which had been in part turned over to the White House Counsel's Office?

Mr. ICKES. Yes.

Mr. BEN-VENISTE. And if I understand your testimony correctly, the balance of the relevant documents, you were under the impression, had already been turned over and when an additional scrub down of all documents was again requested, it was determined by comparing the documents in your possession to what had been turned over by White House Counsel's Office, that there were additional documents that had not, up to that point, been turned over from your files. Is that correct?

Mr. ICKES. That is correct. I was under a mistaken impression, and I apologize to this Committee, that I had turned those documents over. But when I went back through, I pulled all of my files, I think it was last Thursday, I left them in my office because I was leaving on a trip with the President, and I had Ms. Sherburne, I informed Ms. Sherburne and my own attorneys to go through all of my files to see if there was anything in there that was responsive that had not been turned over.

Mr. BEN-VENISTE. Now, I think it is the appropriate business of the Committee, and I will attempt to do that, to review the actual documents. Let's look at them, see what's in them, and receive your explanation, to the best of your recollection, as to what occurred at the time. And then we can all make a determination as to the relative importance of this material to the matters under which we are charged with investigating. So let's turn to your notes of January 16, 1994, if I may.

Mr. ICKES. That starts with S20790, Mr. Ben-Veniste?

Mr. BEN-VENISTE. Yes.

Mr. ICKES. OK, I have those.

Mr. BEN-VENISTE. That was a meeting which took place outside of the White House?

Mr. ICKES. That's correct. It took place at Vernon Jordan's home.

Mr. BEN-VENISTE. The persons who participated in that meeting?

Mr. ICKES. I can only tell you what my notes show. I think they are fairly complete. There was Mr. Jordan, Mr. Kendall, Susan Thomases, Kirk O'Donnell, who is a partner in Mr. Jordan's firm, myself, Maggie Williams, George Stephanopoulos, and Pat Griffin. There may well have been others, but I can only recall what I have on my notes, Mr. Ben-Veniste.

Mr. BEN-VENISTE. All right. Now will you go through the notes and translate them for us, if you will, and add your recollections as you go through them as to what the substance of that meeting entailed?

Mr. ICKES. Basically the purpose of that meeting was to get——

First of all, I would like to point out that the President, by that time, by the 16th of January, it's my recollection that he had already asked his Attorney General to appoint a Special Counsel.

Mr. BEN-VENISTE. I believe there is a letter reflecting that decision as having been made as of that date.

Mr. ICKES. Basically the purpose of that meeting as I recall, Mr. Ben-Veniste, I think it was instigated by me, was to get, review the whole situation. We were under a great deal of questioning by the press during that period of time.

The President had called for a Special Counsel, and it was to get the views of some people who were not involved in the day to day who might have a broader perspective on it, such as Mr. Jordan, Mr. O'Donnell, Mr. Kendall, Ms. Thomases, and others, to see what their perspective of the various situations were and that was, as you can see from these notes, we went down and discussed a variety of different issues.

Mr. BEN-VENISTE. To perhaps refresh your recollection and to ensure that the record is accurate on this point, we have a letter which is dated January 12, 1994, from Mr. Nussbaum to Attorney General Reno, requesting the appointment of a Special Counsel 4 days before this meeting took place. So please go on.

Mr. ICKES. How do you want me to proceed? You want me to just go down through the notes?

Mr. BEN-VENISTE. Why don't you go through the notes and indicate, since the notes are, of course, not complete sentences and to some extent difficult to read, what they indicate and what you recall of the substance of the conversation.

Mr. ICKES. I will tell you at this point, Mr. Ben-Veniste, I do not recall much other than what the notes themselves indicate. I do recall the nature and the substance and the purpose of the meeting. The specific conversations I am basically going to be limited to my notes.

Mr. BEN-VENISTE. Well, it is my intention that for the purposes of the substance of this Committee's investigation, what we're all about, rather than spend all our time on the question of how the notes were discovered, the reasons which you have indicated as to why they were not produced earlier, we have that.

Now, I think the important thing is to see what is in the notes, look at that very carefully, and get your best recollection about those events.

Mr. ICKES. Well, one issue that was being discussed at that time was the release of documents. And as you recall, there had been a subpoena that had been negotiated between Mr. Kendall and the Department of Justice in late December of the preceding year, and I think the notes say here, "release of documents: on the advice of counsel; and totally . . ." it probably should read "total" but "totally cooperation." And I take that to mean that there was, that the discussion there was that there should be complete and total cooperation as had been promised by the President with respect to the release of documents.

The next item, Number 2, "Statute of limitations." I am just reading now so that you all can get a sense of what is said here, "no allegation that the Clintons have broken any law and therefore"—obviously I trailed off and started taking a new note—"we don't know what civil refers to, always exception for found." I think that meant "fraud." And my understanding was, although I'm no expert in this area of law, that notwithstanding the statute of limi-

tations, which had been discussed extensively by Members of the Senate up here at that time, that there was an exception for fraud. Again, I can't go beyond the discussion here. I don't have a specific recollection.

Number 3, "We should spend." I think as I read my handwriting, it should be "We should speak." And the question there is who should speak and in what terms. A lot of people at the White House were talking about Whitewater at that time. Some were informed, some were misinformed. Quite frankly, we were getting hammered by the press because of misinformation, not wittingly but inadvertently was coming out of the White House, and one thing we wanted to do was to limit the number of people who were speaking about Whitewater so that, and when I use Whitewater, I use that in a broad generic sense, so that accurate information would be coming out from the White House.

And so I think the reference to "shut down White House in answering" basically meant restricting the number of people who were responding to the press regarding these matters. "Op ed. OK, no problem legally." I think that there was a discussion about whether an op ed piece could be done and should be done, and whether it was a problem, and the answer there I think is that there was no problem legally.

Now, I am at somewhat a disadvantage, Mr. Ben-Veniste, because I have an unredacted portion.

Mr. BEN-VENISTE. We've reviewed all of the——

Mr. ICKES. What is the next item that you want me to refer to?

Mr. BEN-VENISTE. We should provide you with the same document that we have.

Mr. ICKES. You may have. I have not looked through. Bear with me for one moment.

Mr. BEN-VENISTE. Might I say, Mr. Chairman, and I note Senator Hatch has been very interested in this issue as well, that we have reviewed all the redacted portions in this document, and we have concluded that the redactions are appropriately made.

Mr. ICKES. I now have a redacted document in front of me. The next item——

Mr. BEN-VENISTE. And when I say we, I mean, Minority staff, Mr. Chairman.

Mr. ICKES. The next item that I have on the redacted portion says, Number 4, "Congress." The rest of it's redacted, is my understanding.

Going to the next page at the top, it says, "Consensus that White House stop talking, refer everything to Special Counsel. Don't refer to DK." I think the initials DK refer to David Kendall. And again I think there was consensus not necessarily adhered to but that the White House stop talking as much as it was and especially through as many voices as it was and that was something that we were attempting to do.

And I think, as I recall, there was discussion just about referring questions as much as possible to the then-Special Counsel who had been called for, I think had not yet been appointed, but had been called for.

The next item is "DK facts." I think that that is a reference, as I recall, to David Kendall, who basically gave a recitation of pertinent facts.

Mr. BEN-VENISTE. We have received in this Committee, Mr. Kendall's summary and his chronology of the Whitewater facts, and this seems to be a shortened version of that. There is nothing that I see remarkable in that recitation. If I am incorrect, I know Mr. Chertoff will correct me. Let's turn to the next portion.

Mr. ICKES. Going on then, Mr. Ben-Veniste, to the next page, again I think that this is basically a continuation of the recitation of facts that Mr. Kendall gave at that meeting. I will go down them if you want, but again.

Mr. BEN-VENISTE. With respect to the Rose Law Firm, would you read your notes there? Right. This is on S20792.

Mr. ICKES. Wait just a moment. OK, you are now on the next page?

Mr. BEN-VENISTE. Right.

Mr. ICKES. I'm sorry. "Rose Law Firm? 1985 retain (15 months retainer), try to get Arkansas Security Commissioner to approve issuance of preferred stock." I think that refers to the representation that they were giving, making before Ms. Schaffer.

Next line or next block is "to permit Madison Guaranty to act as security. Bassett approved but only if it improved its capital account." Again, I can't go much beyond that, but my understanding is, based on what I've heard and what I've learned, that the Rose Law Firm was representing Madison Guaranty before Ms. Bassett, who was the Securities Commissioner at that time.

Mr. BEN-VENISTE. We are still in the recitation of facts given by Mr. Kendall at this point?

Mr. ICKES. That I think is fair. It does not indicate that, but I think it's fair to say that. I don't want to say that absolutely but it appears to be, Mr. Ben-Veniste.

Mr. BEN-VENISTE. OK. Now pick up, if you will, on the next page.

Mr. ICKES. And the first line of that is what? By 1992, all White House?

Mr. BEN-VENISTE. Right.

Mr. ICKES. OK. Do you want me just to continue reading that?

Mr. BEN-VENISTE. Yes.

Mr. ICKES. Yes. "By 1992, all White"—presumably referring to Whitewater—"loans paid off. Losses not taken—primarily to avoid possible IRS audit during 1992 campaign." Next line is "Three years to amend returns maybe they will claim it." Next line is "They did take some interest deductions during prior years."

Mr. BEN-VENISTE. Do you recall anything in addition to your notes with respect to that discussion?

Mr. ICKES. I do not. I'm not sure whether that is part of a Kendall recitation or whether that was part of the discussion.

It strikes me, as I look at this now, especially based on the testimony last summer, that this was probably in error because I think that the losses they were talking about were to be taken in 1993. But again my notes show what they show. This may well have been an allegation that people were talking about. I just have no recollection of how it came up.

Mr. BEN-VENISTE. Then there is a circle with some handwriting. What does that say?

Mr. ICKES. It says, "political argument." That is next to the phrase, "They did take some interest deductions during prior years." I can't, I literally cannot recall what that means. The notes speak for themselves. I'm afraid I can't expand on it, Mr. Ben-Veniste.

Mr. BEN-VENISTE. OK. Then go on.

Mr. ICKES. Item Number 3, "Legal costs of BC/HRC." Referring to the President and to Mrs. Clinton. "VJ," referring to Mr. Jordan, "do nothing now. HI," referring to myself, "urged that the right people get handle and answer on this." And then over to the right hand side, the block says, "Public will resent it if HRC abandons health care and focuses on"—sentence trails off.

Mr. BEN-VENISTE. Do you have a recollection of what that was about?

Mr. ICKES. I think focusing on Whitewater and what was going on in connection with Whitewater. She was obviously, a lot of questions were being asked about her and especially the Rose Law Firm representation of Madison Guaranty at that time, as I recall.

Mr. BEN-VENISTE. Continue on, please.

Mr. ICKES. Item Number 4, "HRC," referring again to Mrs. Clinton, "as lawyer on this. She can't be diverted from health care otherwise press/public will think White," meaning Whitewater, "is a big issue if she isn't involved with health." Kirk O'Donnell, that's "KOD," I'm sure refers to Mr. O'Donnell, "feels strongly about this."

Mr. BEN-VENISTE. And then beyond that?

Mr. ICKES. Number 5, "Betsey Wright. Pat G," I think referring to Pat Griffin, "A. Wexler," I assume refers to Anne Wexler. It was my understanding that Ms. Wright was working at Ms. Wexler's firm at that time. I have no idea what that was about. All I can do is tell you what's on the notes.

Mr. BEN-VENISTE. Go on.

Mr. ICKES. The next one is item Number 6, which is "House Banking Committee."

Mr. BEN-VENISTE. That's redacted. Then there's 20794.

Mr. ICKES. Which I do not—wait a moment, Mr. Ben-Veniste.

Item Number 7, "Independent Counsel statute. Wait until SC," presumably referring to Special Counsel, "is appointed. Then discuss whether we want it permitted to have SC," meaning Special Counsel, "considered as IC," presumably referring to Independent Counsel, "or not." That Independent Counsel statute had been basically blocked by the Republicans, as you know, and there was a discussion whether or not it was going to be reenacted.

Mr. BEN-VENISTE. Go on.

Mr. ICKES. Number 8, "Reconvene this group on regular basis." Presumably referring to the group that was meeting in that room. My recollection is that it was never reconvened.

Number 9, "Op ed." Referring presumably to an op ed piece. "Maybe do this, maybe not, no strong feelings on this." Incomplete sentence. Don't know what that really refers to.

The next item, PG 10.

And then the final item is Number 11, "Calls from press. All calls to GS," referring to George Stephanopoulos, "we are moving on."

Mr. BEN-VENISTE. All right. Now that concludes the notes for that meeting. Is there anything else that you recall about the meeting that was not reflected in the notes?

Mr. ICKES. Not that I recall, Mr. Ben-Veniste.

Mr. BEN-VENISTE. So this was again, if I understand your testimony, a session that involved people who were outside of the day-to-day business of the White House and this issue, to have them listen to this factual recitation and exchange some ideas about how to proceed?

Mr. ICKES. Yes. It was an attempt quite frankly to get outside perspective including people who were involved in the day to day, but also including people who were not involved in the day to day, might have a different perspective on things.

Mr. BEN-VENISTE. Now last week when Mr. Gearan was before us, there was an issue about discussions prior to the 12th when the President made the determination, or at least communicated the determination through counsel that a Special Counsel ought to be appointed as to the position of Attorney General Reno. And there was much discussion, it seemed like hours, over a phrase in Mr. Gearan's notes to the effect that Attorney General Reno had closed the door on the appointment of a Special Counsel. Do you recall that discussion?

Mr. ICKES. Well again, this happened well over 2 years ago. I'm not sure I recall the specific discussion. I would also point out that those are Mr. Gearan's notes, not my notes.

I do know that there was considerable discussion in the press, among other things, in early January, that the Attorney General was very reluctant to appoint a Special Counsel. And I think the understanding was based, in some part, on either her statements or the statements of her press spokesmen, that she was waiting to see if the Congress would reenact the Independent Counsel statute, so that she would not have to appoint a Special Counsel.

Apparently, she had reservations about appointing a Special Counsel and it was also my understanding that she had already appointed one or two career Federal prosecutors, one of whom, at least, was a Republican and had been a former U.S. attorney, to initiate and open an investigation into the so-called Whitewater matter.

Senator SARBANES. And there was considerable discussion and debate at the time about the appointment of a Special Counsel, was there not?

Mr. ICKES. There was considerable, Senator Sarbanes, yes.

Senator SARBANES. In fact, on January 11th, Chairman D'Amato, Senator Dole, and some other colleagues, both in the House and Senate, wrote to Attorney General Reno about this very issue. The letter starts off:

We regret that you have rejected Congressional request to appoint a Special Counsel to examine the allegations of potential misconduct that have recently surfaced concerning Madison Guaranty Savings & Loan and the Whitewater Development Corporation.

It goes on to, in effect, urge her to appoint a Special Counsel.

In fact, I think when we had Mr. Gearan here, we had quotes from Senator Dole from one of the Sunday talk shows where he had raised the point of appointing a Special Counsel. So this was

a matter that was very much in the forefront of the press discussion at the time, was it not?

Mr. ICKES. There was a great deal of press inquiry about it. There was, as I recall, leading newspapers, such as The New York Times, The Wall Street Journal, The Washington Post, and others were at least questioning why Special Counsel was not appointed. In fact, I think it is fair to say that at some point during early January, those editorials were calling for the appointment of Special Counsel. And so the answer is yes. There was a great deal of discussion, Senator Sarbanes.

Mr. BEN-VENISTE. And taken from the letter that Senator Sarbanes has just referred to, where it was certainly the perception of Senator Dole and Senator D'Amato and others, that Ms. Reno had rejected, by that point, calls to appoint Special Counsel. Would it not be fair to characterize her position at that point as having closed the door?

Mr. ICKES. Well, again, I don't want to characterize Mr. Gearan's notes. I think it is fair to say that based on what I knew and was reading at the time, that it was certainly my understanding that the Attorney General was reluctant, at the very least, and basically it said that she was not inclined to appoint a Special Counsel.

Mr. BEN-VENISTE. Now while these notes of Mr. Gearan are interesting in sort of a historical way about what the discussion was about the appointment of a Special Counsel to investigate. Indeed, we have had in this Committee since the fall of 1995, at least, and I refer to document 7301 from the Justice Department, Ms. Reno's own handwritten notes from January 1994, indicating her thinking on this. If we could turn to the second page of those notes. I believe they say:

If I appoint the person, she or he not independent, I will continue to be blamed. The DOJ has to review expenditures. It's not an Independent Counsel.

Thus, in the Whitewater case—I am going to be damned if I do and damned if I don't.

My solution—Do it the Right Way. Make sure the investigation is put in the hands of career prosecutors who are experienced, who have served under different Administrations.

To bring in a Special Prosecutor, close prosecution—

I assume that meant close the on-going prosecution by the Justice Department.

—gear up, start up is simply not in best interests of case. Disruption and delay.

I take it that those notes contemporaneously made by the Attorney General of the United States, which were prescient in the fact that after Mr. Fiske was appointed and well underway and receiving the praise of most fair-minded people about the job he was doing, he was then replaced, and the argument was made just as the Attorney General had predicted, that because she had appointed him, there was some taint associated with it.

I see my time has expired, Mr. Chairman.

Mr. ICKES. Mr. Chairman, would you indulge me in a 5-minute break?

The CHAIRMAN. Sure. We'll take a 5-minute break.

Mr. ICKES. Thank you.

[Recess.]

The CHAIRMAN. Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you.

Mr. Ickes, I'd like to thank you for appearing before the Committee today. I, like many others, have been somewhat dismayed by the fact that we received even more notes from the White House late Tuesday evening. I'm not unhappy that we received the notes because they are responsive to the Special Committee's request, but I think all of us are concerned about the timing.

Next week, the Special Committee's Resolution will expire. And in light of that fact, with notes trickling out of the White House, some 2 and 2½ years late, I can see no other way than to extend the Committee's jurisdiction so it can fulfill its Constitutional duty. I think anything less than that would be a dereliction of our Constitutional duty.

We just cannot be expected to wrap up this investigation when we're still receiving, just as we did Tuesday night, important, very important information and documents from the White House. So I hope you understand that.

Today, I'd like to ask you about several meetings you attended in January 1994, in which the appointment of a Special Prosecutor or Independent Counsel was discussed. And as you are aware, Mark Gearan took extensive notes at those meetings.

Were you aware, Mr. Ickes, that Mrs. Clinton adamantly opposed the appointment of an Independent Counsel during, at, or near the time of those meetings, or even before?

Mr. ICKES. I was aware that she, as did Senator Dole, had very strong, which is already replete on the record from Mr. Gearan's testimony, had very strong reservations about the appointment of Special Counsel or Independent Counsel. Those terms were used interchangeably.

Senator HATCH. But I asked you, was she opposed to it at one time or another?

Mr. ICKES. She had very, very grave reservations, Senator.

Senator HATCH. Did you ever discuss the appointment of a Special Prosecutor or an Independent Counsel with either President or Mrs. Clinton?

Mr. ICKES. I'm sorry, I didn't hear you.

Senator HATCH. Did you ever personally discuss the appointment of a Special Prosecutor or an Independent Counsel with either the President or Mrs. Clinton?

Mr. ICKES. Yes. I had discussions with them, as did other members of the staff.

Senator HATCH. During this January 4th meeting, Mr. Gearan's notes reflect that the appointment of an Independent Counsel was debated. And at page 20566, those notes state that Mrs. Clinton entered the room and said, "Looks like a meeting I might be interested in." Now my question to you is this. Did Mrs. Clinton express concerns during that meeting that an Independent Counsel should not be appointed?

Mr. ICKES. Mrs.—as I recall—I don't know when the date of that meeting—

Senator HATCH. Well, whatever, that or near that time.

Mr. ICKES. It was in early January, Senator. As I recall, Mrs. Clinton did join one meeting in which there were a group of senior

White House people. There was a discussion about the pros and cons of appointing a Special or Independent Counsel and she had some observations on it. She had, as you know, served on the Whitewater—I'm sorry, the Watergate Committee—but she had concerns and expressed those concerns.

Senator HATCH. Did she make any particular comments regarding the appointment of a Special Prosecutor or Independent Counsel, other than expressing her concerns?

Mr. ICKES. As I recall, her concerns were: Number 1, that they, meaning she and her husband, had done nothing wrong. Number 2, there was no predicate for the appointment of an Independent or Special Counsel, and she was concerned about the fact that if mere allegations were sufficient, then you'd have Special Counsels being appointed any time somebody raised an allegation, without laying the required predicate.

Senator HATCH. Mr. Gearan's notes, as you know, suggest that such a conversation did take place. Because on page 20569 of Mr. Gearan's notes, he records that Mr. and Mrs. Clinton—the President and Mrs. Clinton were adamantly opposed to an Independent Counsel being appointed to investigate Whitewater.

During a January 7th meeting, Mr. Gearan reported that you, Mr. Ickes, said or he reported you as saying that a major problem with the Independent Counsel is that "HRC (Hillary Rodham Clinton) adamantly opposed" the appointment of a Special Prosecutor. Now that statement's recorded on page 20576 of Mr. Gearan's notes. Do you recall that?

Mr. ICKES. I don't recall the word adamant. I do recall on occasion saying, because it was well known, that Mrs. Clinton had very, very grave reservations.

Senator HATCH. Mr. Gearan's notes also record that you said that "discussion of counsel is the biggest f'ing waste of time." Apparently because the Clintons opposed the appointment. Now it seems to me that you would have made that comment only if you believed that President and Mrs. Clinton were opposed to a Special Prosecutor's appointment. At least, that's what I think is a fair interpretation if Mr. Gearan has the quote exactly right.

Mr. ICKES. Well, again, Senator, these are his notes, not mine. All I can say is that there were a number of people in the White House, including the First Lady, and I think to a lesser extent the President, who had serious questions and serious reservations about the need or necessity of appointing a Special Counsel. I think adamantly opposed is not a characterization that I would have used, but again those are Mr. Gearan's notes, not mine.

Senator HATCH. Well, see, in my opinion, the appointment of an Independent Counsel has not been a waste of time. I, myself, have problems with that through the years because I think sometimes it's over used, but in this particular case it doesn't appear that it's a waste of time.

This past Tuesday, two more indictments were issued by the Independent Counsel charging that Herbie Branscombe and Robert Hill, two bankers, were involved in illegally funneling funds through the Clinton Gubernatorial Campaign.

And as you are already aware, the Independent Counsel's investigation has led to Grand Jury indictments on at least 21 different

counts against James McGregor—excuse me, James McDougal, and the Sitting Governor of Arkansas, Jim Guy Tucker.

What I find particularly disturbing, the investigation rooted out scandal within the Justice Department. The former number three official at the Justice Department, Webb Hubbell, was convicted and is now serving time in prison.

So the Independent Counsel's investigation, of course, went on to several other indictments, and it may even lead to more charges against others, so naturally these are things that I am concerned about as Chairman of the Judiciary Committee.

Let me just ask this. I am particularly concerned that attempts were made to influence the appointment of an Independent Counsel or the scope of the Independent Counsel's investigation. Now, Mr. Ickes, did you discuss with the President or Mrs. Clinton, or anyone else in the White House, that a major problem with the appointment of an Independent Counsel was that such a person could not be controlled?

Mr. ICKES. There was certainly discussion by members of the staff, some members of the staff, Bernie Nussbaum and others, that historically the scope and timing that it took Independent Counsels or Special Counsels to complete their work was extraordinarily long, and it was not unusual, in their view, for Independent Counsels to go beyond their original mandate. That's what they felt, and they expressed those views, so there certainly was discussion about historically what Independent Counsels had done, and people had different views on that.

But there is, I think the critical point to make, Senator, is that the President ultimately decided to appoint Special Counsel or asked the Attorney General to appoint Special Counsel with no restrictions whatsoever on jurisdiction or scope.

Senator HATCH. Well, again, if Mr. Gearan's notes are to be believed, and I presume that they were accurately taken at the time, his notes record that several White House officials, including you, argued that an Independent Counsel should not be sought because such a person or counsel could not be "controlled," and that word did bother me. Do you recall making any comments like that, or anybody else making comments like that at or near that period of time?

Mr. ICKES. Senator, if you would indulge me for just one moment before answering that question, which I am perfectly prepared to answer.

Senator HATCH. Sure.

Mr. ICKES. Going back to document 20569, where it says, "Discussion of counsel is the biggest f'ing waste of time."

Senator HATCH. Right.

Mr. ICKES. I think Mr. Gearan has testified, and again he took these notes, I don't have a distinct recollection of these discussions word by word, but I think that he testified not that the appointment of a Special Counsel would be a waste of a time, but that the discussion in the context of these meetings, which were formed and which were being held to try to deal with the press, to respond to the press was a waste of time, given what he viewed at least as the attitude of the President and the First Lady.

Again, if you could turn me to the page where you apparently were quoting me about Special Counsel?

Senator HATCH. It would be, I think——

Mr. ICKES. I apologize. I wasn't on the page when you were.

Senator HATCH. I think it's 20567.

Mr. ICKES. 567?

Senator HATCH. Right in the middle where it says, "Subject to no control." And then I would say 20575 where it says, "We cannot affect the scope of the prosecutor." Those are two areas that I was referring to.

Mr. ICKES. Well, again, Senator, I don't think that these notes on those 2 pages are attributable to me. There is no question that there was a broad-ranging discussion, as there should be in the nature of Special Counsels. What the history had been on them, and people, different people in the White House, different advisers, both in and outside the White House, had very different views on it.

But I think, again, there were some who were concerned that Independent Counsels, the history had been that they went beyond their mandate, took an enormous length of time, and raised those concerns when giving advice to the President. But I think what ultimately counts is what the President in fact did.

Senator HATCH. My time is up, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I'm going to yield to Senator Dodd, but before I do that, I do want to say, Senator Hatch said that the two people indicted in Arkansas in the last day or so were illegally funneling funds to the Clinton campaign. I don't think that's accurate. What they were charged with was misapplication of bank funds, making false entries in bank records, and failing to report transactions to the Internal Revenue Service. In fact, Mr. Starr's office——

Senator HATCH. What do you call that? Maybe I got it wrong but my understanding was that there was some \$7,000 that they would not give to the campaign until they discussed with the Governor what they wanted to get done.

Senator SARBANES. We ought to get it accurate. Mr. Starr's office issued a news release which says, "The indictment does not assert criminal wrongdoing by Clinton."

Senator HATCH. Well, no. I didn't mean to imply that the President committed a crime.

Senator SARBANES. Well, I thought that——

Senator HATCH. I'm glad you did because if that's the way it was construed, it certainly wasn't meant that way. But I have to say that it raises some problems and it raises some worries in everybody's mind just what kind of a State do they operate down there. I mean, these hearings have just gone on and on about different things that have gone on down there that you just have to question. And who's at fault, I think, we will have to leave that up to Independent Counsel.

Senator SARBANES. I think we need to be careful with the assertions that are made here, particularly when the Independent Counsel, himself, has issued a release in which he says, "The indictment does not assert criminal wrongdoing by the President."

Senator HATCH. I want to make it clear that I did not make any assertion that the Clintons had done anything wrong. I brought it out that they were charged with illegally funneling funds through the Clinton Gubernatorial Campaign. That doesn't say anything about then-Governor Clinton, but I think that's accurate.

Senator SARBANES. Well, that's not what they were charged with, I would say to the Senator.

Senator HATCH. What? If the money didn't go to the campaign, I would like to know where it went.

Senator SARBANES. The charge was the reimbursement from the bank and the Independent Counsel has said, in his release, that he was not charging any wrongdoing by the President.

Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman.

First of all, let me say how much I agree with my colleague from Utah. These hearings have gone on and on and on. And hopefully that's not going to be the case interminably.

You know, Mr. Chairman, it just occurs to me and, obviously it has been stated before, but it may be helpful to reiterate it. I mean, we're looking here at a voluminous amount of documentation that's come to this Committee over these many months now. I heard the number mentioned 14,000, and I think actually the number is higher than that if you go back to other sets of hearings.

I don't recall, other than some cases where there was a legitimate Constitutional controversy over Executive Privilege, that we have had to issue any subpoenas where there's been a legitimate legal argument. As I recall, I think every single witness that has appeared before this Committee has come voluntarily, without exception.

I have been in Congress 20 years and I don't recall any Administration over the past 20 years that has complied with an investigation to the extent this Administration has.

In previous hearings, and many Members of this Committee have served on other committees, we've gone through incredible ordeals in trying to get witnesses to appear before Congressional Committees where there have been other investigations.

We also recall vividly shredding parties by Oliver North. I recall Fawn Hall stuffing documents into her boots to sneak them out of the White House. We had 18.5 minute gaps on tapes. So when we're looking at obstruction of justice issues, we have some wonderful examples to compare under previous Administrations.

Now it's regrettable that we didn't get all of these documents exactly when we wanted them, and it's a legitimate question to raise what's in these documents that we're getting? Is there anything in these documents? How they were handled, that would indicate that there was something that was being hidden? Is there some reason they weren't turned over?

While we can regret that we didn't get them all when we wanted to, we need to look at the documents themselves, in my view, and determine whether there's anything in those documents that would contradict information that we already have.

So I hope we would keep our eye on the ball here, and again I'm certain colleagues are going to raise the issue about why these weren't turned over earlier, but I think in answering that question, and examining the documentation can be of tremendous, tremendous help to us.

Now let me ask you, Mr. Ickes, if I can, some very basic questions about this issue of the documents we are getting today. Did you deliberately hide or withhold these documents in your office that we're getting?

Mr. ICKES. Absolutely not. If I had, they wouldn't have been turned over. As I explained before, I was under the mistaken impression, and I regret it and I apologize to the Committee, that I had turned all of those documents over, all of which are dated I think in January and February of 1994, to both the White House Counsel and my own counsel, and it was not until the letter came down from this Committee dated I think the 15th of February of this year, asking for my notes that my lawyer, Mr. Bennett, asked me to do a complete review of all of my files again, which I did. Then I left those files for both my lawyer and White House Counsel to look at. But there was no attempt whatsoever to keep documents from this Committee or to hide documents.

Senator DODD. Are you voluntarily appearing here this morning?

Mr. ICKES. I am. I think I am.

Senator DODD. Well, voluntarily I meant in terms of, obviously, not under subpoena.

To the best of your knowledge—you have been over these documents over the last several days, I presume, in preparation for this hearing this morning; is that true?

Mr. ICKES. I have reviewed the documents with my lawyers, yes.

Senator DODD. Is there anything that you have seen in these documents that contradicts earlier statements or earlier evidence that this Committee has received?

Mr. ICKES. Not to my knowledge.

Senator DODD. Anything you saw in them, and you went, holy cow, boy, this is really going to hurt us?

Mr. ICKES. No, not to my knowledge. I mean, obviously people can put different interpretations and different glosses on words, but to my knowledge and from my viewpoint, the answer is no, Senator.

Senator DODD. Well, I know we play gotcha up here a lot with witnesses to try and snare people, but I think we needed to get to the bottom line. Again, I'll emphasize the point. I regret deeply we didn't have all these documents at the time we did, because obviously that raises the issue, why didn't you get them, what are you hiding, what are you trying to keep from the Committee.

I think it's legitimate to raise that issue, but it's just as important that Members of this Committee, in my view, review those documents and determine whether there's anything in there that would lend credence to the argument that matters are being intentionally withheld, if there's nothing in those documents that contradict what this Committee's already been informed of, in fact, things that may corroborate what the Committee already knows, then I think you have to look at the testimony about why the docu-

ments were not forthcoming or we didn't get them as early as we did in that light. I just want to emphasize that bottom-line point.

Now a lot has been made of the Mark Gearan memos, and we have been over them, and I think you made the point yourself, but I want to emphasize it again. Maybe, Mr. Chairman, we might put up on whatever you call this thing, this television screen——

The CHAIRMAN. The Elmo.

Senator DODD. Elmo, the document we were discussing, it's the Gearan document and I don't have the number in front of me. It says, "Discussion of counsel is the biggest waste of time." I just want to emphasize, I think we went over this with Mr. Gearan. It was the discussion of the counsel that was a waste of time.

I made the point last week, and I will emphasize it here again today, I can understand why people not from Washington might be a bit confused about why people may be discussing their concerns about whether there's going to be an Independent Counsel named.

But for the life of me, I don't understand why anybody on this Committee is shocked that people may be discussing what may happen if an Independent Counsel is named. I mean, this is not great news normally. When people in public life find out that there may be an Independent Counsel named, you normally would have a good discussion in your office, I presume, with your staff about the implications of that.

So apparently at this point here, the discussion of the Counsel, some issues have been resolved and that's why it was a waste of time. Is that correct? Is that your recollection?

Mr. ICKES. Well, again, Senator, I didn't take these notes, but I think in the context of this meeting that the President and others were discussing this with their top staff, the business of this working group, for lack of a better phrase, was to gather information so that we could respond to the press. And it was my view that overly extended discussions about Special Counsel and whether or not they should be appointed was a waste of time in that group, not that Special Counsel would be a waste of time.

Senator DODD. I thank you, Mr. Ickes.

I'll just turn back the balance of my time.

The CHAIRMAN. Thank you, Senator.

I'm just going to make an observation before I recognize Senator Faircloth. I don't think it's unreasonable. As a matter of fact, I think given the manner in which some of these documents have been produced, we're not just talking about notes. I'm talking about the last ones we got from Mr. Ickes just 2 nights ago.

We're talking about memos, we're talking about assignments. It is inconceivable to me that these materials were not furnished sooner and that there would be any reason to question the appropriateness of our response when we requested these materials in October. It raises reasonable questions. When notes are just submitted that cover two meetings, and we know that there were a series of meetings over 2 weeks in which tasks were given, and the witness himself was kind of the manager of this group, I question whether we've received all the notes at the present time.

I think it goes to concerns that Mr. Chertoff raised initially. I find it very troubling because this has not happened only once. Again, we're not talking about lay people, we're talking about law-

yers, we're talking about serious matters not inconsequential ones. These materials should have been turned over.

Another point is whether the notes that were turned over were sanitized? Are these all the notes? Now I don't understand how you have notes on two dates but you don't have notes on the other dates. It raises questions.

Senator DODD. Mr. Chairman, I just want to make the observation, I say raising the question I think is legitimate. I think you have the right to raise the question, but I also think in the context of raising the question, after 2 years of these hearings going on, that we have not had any real, except on a Constitutional issue, every witness has appeared voluntarily, thousands of documents turned over. I think we ought to put it in that context. You and I recall certainly Administrations where every single document was a fight. That hasn't been the case here.

So, again, I think you're absolutely correct in raising the question to Mr. Ickes and Mr. Gearan, why didn't we get these documents earlier? What happened that we didn't get them? I agree with you in raising the question. But I think we also then have to answer the question when we look what's in the memos in the context of what we already know. If there's contradiction in those memos, then your argument or the supposition that there may have been something going on here has credence. If it doesn't, then I think this Committee has an obligation to point out as well that while we're disappointed we didn't get the documents, that certainly there's nothing in here that contradicts what we already know.

That's my point and I understand your point. Raising it is legitimate, but we also have an obligation to try and answer that question here as the bottom line issue.

The CHAIRMAN. Well, that's what we are going to attempt to do, and I appreciate the Senator's observation.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Ickes, did you see The New York Times editorial of December 20th that President Clinton had a handwritten note on that said, "Bassett did a good job in campaign on this—can she now?" Have you seen that?

Mr. ICKES. I have seen it today, Senator. It was provided in the documents that were given to me presumably by the Committee.

Senator FAIRCLOTH. You had not seen it before?

Mr. ICKES. I can't say, as a fact, that I have seen it before. I may well have. I probably did, but I can't recall when or where.

Senator FAIRCLOTH. What discussions were held in the White House in regard to Ms. Schaffer's story? The President said she did a good job. Would you tell me what discussions you had or might have had in regard to Ms. Schaffer's story? He says she did a good job in the campaign, can she now? In other words, she told a good story then, can she still tell it? What conversations did you have?

Mr. ICKES. Well, there were conversations about Ms. Schaffer. Mr. Gearan's notes relate those, among others. I don't recall having many conversations with the President about Ms. Schaffer. She had, I think, given an interview or documents to a New York Times

reporter early in 1992. There were questions here in this New York Times editorial about whether she had acted in a fair and impartial way. I gather this is the issue they were raising with respect to some of the decisions that she made with respect to Madison Guaranty.

Senator FAIRCLOTH. Let me ask you. Mr. Gearan's notes on January 7th at the Whitewater group meeting at the White House, you stated, "Beverly Bassett is so f---ing important, if we f--- this up, we're done." Well, just to stop right there, what do you mean, we're done? What does that mean? The Clinton Administration's done? What do you mean, we're done.

Mr. ICKES. What page are you on, Senator?

Senator FAIRCLOTH. What page am I on? Page 576.

Mr. ICKES. Well, again, Senator, these are Mr. Gearan's notes, not mine. But Ms. Schaffer was obviously, as indicated by this editorial that you have referred to, and subsequent articles and editorials, as I recall during that time, her rulings and decisions with respect to Madison Guaranty had been drawn into serious question by members of the press and others.

There was concern, I think, one, as to what the facts and circumstances were. I mean, we were up here in Washington, we were not down in Arkansas and there was a basic concern to make sure that the information that we were giving out at the White House in connection with Beverly Bassett Schaffer, as well as other items and matters that we were being questioned about, was true and accurate. We wanted to find out what the facts and circumstances were so that we could give out full and complete information.

Senator FAIRCLOTH. All right. But then you say, "Let's not talk it to death, let's just get it done." Then you say, "We can't send PB, BL, MW, it will come out." What will come out?

Mr. ICKES. I think the reference there is that those individuals were closely connected with the White House. PB, I think refers to Paul Begala. MW refers to Michael Waldman.

Senator FAIRCLOTH. Well, whoever they were, what's going to come out? What were you hiding? If there's something's going to come out, you had to have hidden something to begin with.

Mr. ICKES. No, it was not hiding, Senator. What I was concerned about there was the suggestion by some that people, someone from the White House go down and talk to Ms. Schaffer directly to get as much information about the facts and circumstances involved in her relationship with Madison Guaranty, both before, when she was representing it, as well as when she was the Securities Commissioner. And it was my view that while there was nothing wrong with doing that, that it would come out and it would be used for highly-partisan purposes.

Senator FAIRCLOTH. All right. You were certainly aware that Donald Mackay from the Attorney General's Office was already in Little Rock and was interviewing and had interviewed Ms. Bassett?

Mr. ICKES. I am not sure that I was aware of that at that time, Senator.

Senator FAIRCLOTH. Would you have sent PB, BL, whoever you might send, had you been aware that Mr. Mackay was down there from the U.S. Attorney's Office?

Mr. ICKES. It was my recommendation that nobody be sent, Senator.

Senator FAIRCLOTH. That nobody be sent?

Mr. ICKES. That was my recommendation.

Senator FAIRCLOTH. "Let's not talk it to death, let's get it done." What did that mean?

Mr. ICKES. My view was, Senator, that we should not send people who were connected with the White House to talk to Ms. Schaffer. As far as I know, no one was sent from the White House to talk to Ms. Schaffer.

Senator FAIRCLOTH. How about, you said there was a list of people we could send. You said, Tisdale, Skip, whoever Skip is, WH and PB.

Mr. ICKES. Again, I am not sure that I said those names. I think that those names may well have been suggested by others.

Senator FAIRCLOTH. Well, Mr. Gearan said you did. Who is Skip?

Mr. ICKES. Skip Rutherford is someone who resides in Arkansas, has known the President, First Lady, and Mr. McLarty for a number of years, and was assisting Mr. McLarty at that time on an ad hoc basis.

Senator FAIRCLOTH. In other words, you could send these people and they wouldn't get caught? It will not come out if we send Skip or Tisdale or these other people. You said we can't send PB, BL, and these other people, it will come out. But then we get it, make sure, then you say item by item make sure her story is correct. And then you suggest sending these other people, Tisdale, Skip, and PB, so that it won't come out.

Mr. ICKES. I don't, I don't think, Senator, that that was necessarily my suggestion. I think they may have been names—this was notes of a discussion going back and forth. It is not at all clear that I suggested that, given the fact that I was recommending against sending people down. I suggest that I was probably not in favor of sending anyone.

Senator FAIRCLOTH. You knew Donald Mackay was down there at the time from the Justice Department?

Mr. ICKES. I am not going to say that as a fact. I may well have been aware of it.

Senator FAIRCLOTH. I have listened to you, Mr. Ickes, be questioned by the attorneys. I have heard the testimony here as we dig and probe. I'm old enough to remember when your father went to the Interior as Secretary. He took the most scandal-ridden Department of Government from the Teapot Dome and he straightened it out. Do you remember what his nickname was? I know you were a young boy when he died, but do you remember, you have read, I am sure, in the history of your father, do you remember what his nickname was?

Mr. ICKES. Well, he had a lot of them, some of them probably not repeatable here, but the one you're referring to—

Senator FAIRCLOTH. No, you are dodging the issue. They are all repeatable. He was known as Honest Harold because he—

Mr. ICKES. He was also known as the old curmudgeon.

Senator FAIRCLOTH. But Honest Harold was what he was known as. He spent \$6 billion of PWA money without a hint of a scandal.

Let me ask you a question, and I don't want a speech. If God would have granted him to have been in that room, what would he have said to you? Boy, you are doing a good job, or would he have said, you are in the wrong crowd, get out of here? And I don't want a speech.

Mr. ICKES. Do you want an answer, Senator?

Senator FAIRCLOTH. Yes.

Mr. ICKES. I think he would have approved of what I was doing because we were doing nothing wrong, and have done nothing wrong, Senator.

Senator FAIRCLOTH. I don't have any further questions.

The CHAIRMAN. Mr. Chertoff, the remaining time.

Mr. CHERTOFF. I just want to focus, Mr. Ickes, on this issue concerning discussions around the Independent Counsel. Am I correct that Mr. Kendall was involved in discussions with the White House about the appointment of the Independent Counsel?

Mr. ICKES. He was.

Mr. CHERTOFF. That the President's private attorney was in contact with you about the wisdom of appointing an Independent Counsel?

Mr. ICKES. There were discussions.

Mr. CHERTOFF. Did Mr. Kendall actually draft the letter that Mr. Nussbaum sent to the Attorney General?

Mr. ICKES. I don't know that as a fact. He may well have.

Mr. CHERTOFF. Let's establish it as a fact. Let's go to your production of documents, S20800, I'm sorry, 801.

Mr. ICKES. I am sorry. Bear with me one moment, because the documents that were given to me were not in order. You are looking for?

Mr. CHERTOFF. I'm looking for the draft letter to Janet Reno. It's attached to a sheet of paper which says, "Should an Independent Counsel be requested?"

Mr. ICKES. I have it.

Mr. CHERTOFF. At the top page of that memo, it says 1/12/94. Are these arguments of pro and con Independent Counsel arguments given to you by David Kendall?

Mr. ICKES. I simply don't know. That is my handwriting. Whether they were conveyed to me by Kendall or whether that is an indication that they should have been given to Kendall, I simply don't know.

Mr. BEN-VENISTE. You have the drafts attached, 20801.

The CHAIRMAN. The examination of this issue is going to take a little time. The Minority has noted that the red light is on. We are going to come back to it.

Senator Sarbanes.

Mr. BEN-VENISTE. Are we going to expand our Resolution to include Teapot Dome?

[Laughter.]

I think we could find something.

Senator DODD. I was being facetious, Mr. Chairman.

The CHAIRMAN. I could understand that. We need a little humor. And I think—

Senator DODD. We can move out Teapot Dome, you think.

The CHAIRMAN. Possibly. But we could expand it. I don't think we've been very expansive in terms of what we've been trying to do. We're going to continue.

Mr. BEN-VENISTE. Mr. Ickes, let me direct your attention to the areas that the Senator from North Carolina raised with you regarding Beverly Bassett Schaffer. Let's review where that matter stood at the point that you considered it in January 1994. At that time, is it correct that there were allegations that had resurfaced in the press which had been raised previously during the 1992 Primary Campaign regarding actions that Ms. Bassett Schaffer took back in the 1980's regarding Madison Guaranty Savings & Loan?

Mr. ICKES. Yes.

Mr. BEN-VENISTE. During the 1992 campaign, is it not correct, Mr. Ickes, that Beverly Bassett Schaffer issued statements which were consistent with the proposition that she had done nothing wrong with respect to the matters that were brought to her attention for regulatory consideration regarding Madison Guaranty Savings & Loan?

Mr. ICKES. That she had issued statements in 1992?

Mr. BEN-VENISTE. Yes.

Mr. ICKES. That is my recollection. I can't cite you chapter and verse, but it's certainly my recollection that she did.

Mr. BEN-VENISTE. Indeed, she has testified here, and everyone in her department at the time has testified here in open hearings under oath. We have reviewed all the correspondence. We have reviewed the Rose Law Firm legal file regarding the actions that were taken vis-à-vis Madison Guaranty and the Arkansas Securities Department.

The conclusion of which, that indeed nothing untoward occurred. She took no improper action. The Federal Home Loan Bank Board regulators charged with supervising Madison have so stated under oath. No one has come here to testify that Ms. Schaffer did anything wrong back in the 1980's vis-à-vis Madison Guaranty, or for that matter, anything else.

Now having that in mind, we forward slightly in time to 1994. The issue again is raised in the media. You are sitting in a group considering what to do. The President has looked at a New York Times editorial, and has made a note to the effect that Ms. Bassett has handled this matter very well previously, and she'd do it again. So now the issue is, not can we somehow get to Ms. Bassett to get her to tell a story that we like? The question is, in view of the fact that she has been surrounded by the national media, has in her words been stalked and interfered with, can we encourage her to once again come forward to relate the truth as she knows it, wasn't that the objective of the meeting?

Mr. ICKES. That was the primary objective, Mr. Ben-Veniste. But in addition, there were complicated areas, especially if you were in Washington dealing with Arkansas matters. We were being asked questions that we did not necessarily know the full and complete answer to.

There was some suggestion, I think in Mr. Gearan's notes, that even had independent securities lawyers take a look to see if things were all on the up and up. But basically, we wanted her to step

forward and tell her story again. She had had, I think, a difficult time with the press attention, and was reluctant to do so.

Mr. BEN-VENISTE. So the discussion about whether someone should be dispatched had to do with the political realities of whether the White House would be criticized if someone from the White House were dispatched to try to encourage Ms. Bassett Schaffer to again speak out on this issue?

Mr. ICKES. Exactly.

Mr. BEN-VENISTE. That is the substance of the concern noted in Mr. Gearan's notes; is that correct?

Mr. ICKES. Certainly it's a concern that I had.

Mr. BEN-VENISTE. The notion that Mr. Mackay, the Department of Justice career investigator who had been appointed by the Attorney General to investigate these matters, that Mr. Mackay was in Little Rock interviewing Ms. Bassett Schaffer is nowhere substantiated in the record here. There's no indication that that was a matter of interest to Mr. Mackay. I believe the opposite was true. Mr. Mackay was looking into issues relating to David Hale and his prosecution for defrauding the Small Business Administration, and was also looking into the criminal referrals made by the RTC regarding Madison Guaranty Savings & Loan.

So the issues relating to the Arkansas Securities Department, to my knowledge, were not under review by Mr. Mackay in any way, shape or form at that point. But even if they had been, there would be nothing improper in encouraging Ms. Bassett Schaffer to come forward on the public record or elsewhere, and tell the truth as she knew it.

Now when you talk about an item-by-item review, I take it the White House under these circumstances, and those involved in this discussion, were not content merely with having Ms. Bassett Schaffer review the facts as she knew them, but that you would independently seek to get some expert opinion on Arkansas securities law, and the state of affairs regarding Federal Home Loan Bank regulation, what was going on in the country and so forth back in the mid-1980's; is that correct?

Mr. ICKES. That is correct. We were being asked any number of questions, many of which we could not answer or verify, as Mr. Gearan has stated. He was the Communication Director at that time. He was very concerned, as we all were, about the credibility of the White House. And misstatements of fact can be blown way out of proportion. But the fact is, we had an obligation to try to get as much accurate information as we could.

Mr. BEN-VENISTE. In addition to what has been marked S 1139 et seq. which is not before you, I'm sure, but is a memo from Ms. Bassett Schaffer regarding Madison Guaranty Savings & Loan, and deals with a very detailed 14-page chronology of events, we have also been supplied with S 20589 which appears to be a January 11, 1994 memo. I wonder whether that could be provided to Mr. Ickes from Jake Sewirt, if I'm pronouncing his name correctly?

Mr. ICKES. You are.

Mr. BEN-VENISTE. The subject being preferred stock.

Mr. ICKES. I have the document.

Mr. BEN-VENISTE. Is it correct that this 2-page document which details a number of issues relating clearly to the appropriateness

of Ms. Bassett Schaffer's decisions, and what was going on in the rest of the country, and what was going on with the regulators back in the mid-1980's, that this was in response to the suggestion growing out of the Whitewater Response Team that an independent review be made of the appropriateness of the actions taken by the Arkansas Securities Department, the law involved, and what was going on both in Arkansas and throughout the country, contemporaneous with Ms. Bassett Schaffer's actions?

Mr. ICKES. That's correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. And the conclusion was, in addition to the fact that the issuance of preferred stock was something which was being applauded by Federal regulators as a way to increase the capital equity of savings and loans throughout the United States, that it appeared that Ms. Bassett Schaffer's conditional agreement in theory to the issuance of preferred stock was, in fact, as a practical matter, never acted upon with regard to Madison Guaranty Savings & Loan because she had set a precondition regarding the financial stability of the savings and loan, which that thrift was never able to comply with?

Mr. ICKES. That's my understanding.

Mr. BEN-VENISTE. Therefore, both with respect to the issue of getting Ms. Bassett Schaffer to come forward again, tell the truth as she knew it, and to do the comparative analysis and the legal analysis, which in turn resulted in corroboration of the appropriateness of Ms. Bassett's actions, all of those things you viewed as correct and appropriate things for the White House to do, given the press attention that had refocused on this matter?

Mr. ICKES. Precisely. I think the people here can't appreciate the amount of press attention that was being focused on this whole issue, and in particular Ms. Schaffer dealing with an issue that was in Arkansas, dealing with areas of law that we did not have any access to.

Mr. BEN-VENISTE. I see my time has expired, Mr. Chairman.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

I'm going to start in an area that I initially had not intended to, but there were some comments made that raised this concern. It has to do with Mr. Mackay being in Arkansas. You all were aware that he was in Arkansas?

Mr. ICKES. I can't say as a fact, Senator, that I was aware at that time. I undoubtedly was.

Senator MACK. Help me a little bit more with that. You can't say as a fact. Was there any discussion about the fact that he might have been in Arkansas at this time?

Mr. ICKES. There may well have been. As I sit here today remembering back well over 2 years ago, I can't say as a fact there was discussion. It would not surprise me if there were.

Senator MACK. If it had been known that Mr. Mackay was there, I would assume you all would have understood he was there because of the nine criminal referrals?

Mr. ICKES. I'm not prepared to assume anything on that. I'm not sure that the delineation of what he was looking at was known or

talked about at any great length in the White House. Again, I can't recall as a fact any of those circumstances, Senator.

Senator MACK. The reason I raise this, frankly, is that I was trying to make some sense. And again, I realize that these are not your notes. But if you disagree with the characterization that Mr. Gearan has put on your comments—I'm thinking particularly of, "Beverly Bassett is so f---ing important, if we f--- this up, we're done." I'm trying to figure out—I gather that was said with some passion, apparently made some kind of impression on Mr. Gearan.

Let me just lay out where I was going with that. If you all knew that Mackay was down there investigating Madison, it seems to me the contact with Schaffer becomes very significant. I hate to say this again, but being a banker, I don't know what is permitted. But I suspect that there is something wrong with contacting an individual who is a witness or a potential witness in an investigation, and you all have expressed deep concern for making a direct contact that's connected to the White House. In fact, I think you went on to say that you were not in favor of sending anyone. Let me ask you this question. Were you in favor of making any contact at all?

Mr. ICKES. As best I recall, I think my view was that we should not try to make contact. But again, Senator, I don't think there is anything illegal about making a contact. My concern was perception, and how it might be used later on.

Senator MACK. Did Mr. Waldman just make a contact on his own, then?

Mr. ICKES. I'm not sure that he made a contact.

Senator MACK. What about Rutherford?

Mr. ICKES. I am not sure he made a contact. But again, Mr. Rutherford—

Senator MACK. According to Ms. Schaffer, there were contacts from Rutherford, Lindsey, and Tisdale. So there were contacts. At least that's what she indicated.

Mr. ICKES. I was unaware of those. Again, Rutherford and Tisdale lived in Arkansas. They know Ms. Schaffer well. I don't know what the nature of the contacts were, what was said, et cetera.

Senator MACK. I want to start over again. You've been very careful up to now to say that you were not in favor of sending anyone down there. But you're now saying that you were not in favor of there being any contact at all?

Mr. ICKES. I think that was my general view. Quite frankly, I did not know contacts had been made. And I certainly don't know what was said in connection with those contacts.

Senator MACK. So you are saying that these contacts that were made, they were unknown to you. So you are suggesting that you are not aware of any information coming back from those people who made contacts?

Mr. ICKES. As I sit here today, I don't recall any.

Senator MACK. In your earlier testimony, I think you said something—don't recall having many conversations with the President about Ms. Schaffer. So you had some conversations with the President with respect to Ms. Schaffer?

Mr. ICKES. I am confident I had some. I can't tell you when, where, who was present. But I am confident that I did.

Senator MACK. I gather you are saying as well, though, that you made no report back to the President with respect to what Ms. Schaffer had to say after there were contacts?

Mr. ICKES. Senator, I do not recall knowing of any contacts that were made, nor do I know when they were made, nor do I know what was said.

Senator MACK. I guess I'm a little bit surprised that you wouldn't have known that Ms. Schaffer had testified to the fact that there were three contacts—Rutherford, Lindsey, and Tisdale. I assume you have been following this fairly closely?

Mr. ICKES. I follow it. I don't follow it day by day or word by word.

Senator MACK. Again, I want to try to get very specific on this. You did not direct, imply, insinuate that it would be a good idea for someone to contact someone in Arkansas, to make this contact with Ms. Schaffer?

Mr. ICKES. As I sit here today, I do not recall that. And as I think Mr. Gearan knows for a fact, I was against sending people down from the White House.

Senator MACK. I know you've said that over and over again, that you were against sending someone down. I think there are several reasons why one can kind of come up with why you wouldn't want to send someone down. But the implication clearly is there now, at least from my perspective, that since you didn't want to send somebody down where there would be this direct contact, what we do is make some behind-the-scenes contact, and I'm curious. I don't know whether it would be interesting to ask Rutherford who suggested to him that he make the contact. I think what he's going to testify to is that Waldman made that contact. It will be interesting to ask Mr. Waldman who suggested to him that that contact be made.

Mr. ICKES. Again, I don't know. You'll have to ask Mr. Rutherford or Mr. Waldman.

My concern, as I said, was a political concern. As far as I knew then and as far as I know now, there was nothing illegal or untoward in having someone talk to Beverly Bassett Schaffer and try to obtain facts and circumstances surrounding her relationship with Madison Guaranty.

Senator MACK. As I said before, attorneys can certainly send that one out. I just found it kind of interesting that, at the same time that Mr. Mackay was in Arkansas with respect to an investigation of Madison, and I suspect maybe with the criminal referrals—I'm not sure about that—that there would be these kinds of contacts taking place. That certainly raises the specter, I think, of the White House interfering with an investigation.

Mr. ICKES. Again, Senator, let me assure you that the White House had no intention, and to my knowledge has not interfered with any investigation. The fact is that Beverly Bassett Schaffer basically was saying that she had done the appropriate thing, that there had not been a conflict of interest. I think that's been borne out by several Federal and State organizations or agencies.

So again, there was nothing she did wrong. There were allegations being raised at that point, that favoritism had been shown,

but I think the record shows that favoritism was not shown, and that she acted entirely properly.

Senator MACK. Again, you sent no one from the White House. You were not involved in either instructing or implying that there should be a contact. I think you testified that you were opposed to any contact, period?

Mr. ICKES. That is my recollection.

Senator MACK. Again, these are Mr. Gearan's notes. These notes reflect that he is suggesting that you said these things. "We can't send BP, BL and W. It will come out." And then, "Item-by-item, make sure her story's OK." Clearly, there was an implication there that somebody's going to be talking with her.

Mr. ICKES. I don't think there's any implication whatsoever in that regard. I mean, there's certainly an implication, but I don't agree that that is necessarily the only implication.

As Mr. Sewirt's memorandum indicates, we were trying to take steps to verify whether the nature of what she had done was out of the way or unprecedented, and I don't know where Mr. Sewirt got his information. He may well have talked to Beverly Bassett Schaffer. I doubt that he did, from the nature of this memorandum.

Senator MACK. What do you think the names "Tisdale and Lindsey's firm, Skip, question mark, White House, pass, PB friend, New York lawyer" mean? I'm under the impression that these are potential contacts, people who can contact Schaffer. What is your recollection as to what that means?

Mr. ICKES. Well, as I say, I didn't take these notes. I don't have a very distinct recollection, if any, of the particular conversation. I can only assume that those were names that were suggested around the table in connection with possibly contacting Beverly Bassett Schaffer. But as far as I know, I gather that some people did contact her. But as far as I know, as far as I can recall, I did not ask anyone to contact her. I was very concerned about the possible political fallout of it.

The CHAIRMAN. I'm going to ask you to bear with me, Senator, put the green light on and an additional 4 minutes, so we'll go to 15-minute rounds, since we're now down to three Senators. You'll have an additional 4 minutes.

Senator MACK. I don't know that I need that.

The CHAIRMAN. That's all right.

Senator MACK. I just want to continue probing on this.

The CHAIRMAN. I want you to continue.

Senator MACK. You have been fairly central. I got the impression from earlier comments that you in essence were engaged in these meetings, and your notes were reflecting giving assignments to various people.

There is the editorial that the President has made, the now-famous notation on, which indicates he thinks it's pretty important. "Bassett did a good job in campaign on this—can she now?" That implies that the President is interested in whether there can be a contact to see how she's doing.

All the evidence suggests that, in fact, the President raised the concern. You all discussed it at your meetings. There are notes that I think are clear, that at least I can suggest from those notes that there were going to be contacts. In fact, contacts were made. You

at the center of all this say that you had nothing to do with the contacts. Nobody reported back to you about contacts. You know nothing of the President knowing of any response coming back from these contacts. I just frankly find that pretty hard to believe.

Mr. ICKES. Senator, all I can tell you is my best recollection. I have no recollection of urging contacts. And my recollection, I think, corroborated by Mr. Gearan's notes, that I had very grave reservations about contacts being made. I'm not saying that contacts were not made. They may well have been. But that, you'll have to ask other people about.

Senator MACK. Are you suggesting that after you had made these, I guess—I would gather, again from these notes, there were some pretty impassioned feelings expressed. Are you surprised, frankly, that there were these contacts after you were so forceful in saying that they shouldn't be done?

Mr. ICKES. I was only expressing my view as to whether or not contacts should be made, Senator.

Senator MACK. Did the rest of the group agree that there should not be contacts?

Mr. ICKES. I think there was general agreement there.

Senator MACK. Who was in disagreement?

Mr. ICKES. I don't recall. But again, Senator, I think the critical point to make is, my concern was political, not legal. There was nothing illegal, as far as I knew then, or as far as I know now, about anyone contacting Beverly Bassett Schaffer. It would have been illegal, obviously, to try to change her story, and to get her to talk about things that she didn't agree with, or to change her story in any way. The fact of the matter is, as Mr. Ben-Veniste has pointed out, her story and what she did was favorable with respect to the White House's position.

What we were concerned about was twofold: Making sure that we knew the facts and circumstances, number one; and as a result of that, you have the memo that Jake Sewirt did. And number two was to see if she would again come forward and talk to the press. She'd had a very difficult time, apparently. I wasn't there at the time, but apparently, she'd had a very difficult time with the press in early 1992.

Senator MACK. There was apparently an interview that Ms. Schaffer gave to an AP reporter, where she was asked about her interpretation of the meeting that we've been referring to. Are you familiar with that?

Mr. ICKES. I'm not. I'd like to see a copy of it.

Senator MACK. The only reason I ask it that way is because I saw you nodding. I thought maybe you were implying that you were aware of this interview.

Mr. ICKES. Let me see it first. Now what page are you looking at, Senator?

Senator MACK. I am on the second page, the third paragraph down. As per her interpretation of the meeting, Schaffer said, "It looks to me like they were trying to figure out, 'Who can talk to her? Who is her friend?' They were desperate to try to find a way of getting questions about all this, to deal with it."

Mr. ICKES. Right.

Senator MACK. I think that's an interesting observation of someone who is kind of a principal in this, that looked at these notes and kind of came to the same conclusion that I came to, but apparently totally different from your perspective, that she looked—

Mr. ICKES. Right.

Senator MACK. It also refers in here—again, were you aware of this? Had you seen this before?

Mr. ICKES. I think that I have seen this very recently. I have not seen it until the last couple of days. I've seen it in a different form.

Senator MACK. Again it surprises me in that you told me a minute ago that you were not aware of any contacts, because the next three paragraphs go down and explain the three contacts. One was by Lindsey at the Arkansas basketball game; two was by Skip Rutherford, and the other was John Tisdale. So I'm getting mixed stories from you with respect to your knowledge of these contacts.

Mr. ICKES. Now that I look at this document, I think that I have seen this in a different form, in the AP. I don't recall seeing this literally until 2 or 3 days ago, at the earliest.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want for just a moment to address this question of the production of documents, and some of the assertions earlier that there might be a deliberate pattern of evasion.

First of all, I was interested in the letter that Ms. Sherburne sent to the Committee when these documents were furnished, in which she says in one of the relevant paragraphs:

We regret that we failed to identify this material sooner. There was a mistaken belief that the material had been provided to the Council, and then it was discovered in the files. In order to be able to assure ourselves and the Committee that there has been no other oversight, we have undertaken to verify that all relevant documents provided to the Council's Office by White House staff beginning in March 1994, have been reviewed and produced to this Committee with responses.

Further, we are confirming the White House files of certain former White House officials have been reviewed. We are working to complete this verification quickly. And in the event we identify any other documents, we will provide them to the Committee promptly.

Now the amount of document request here, of course, has been extraordinary; and the amount of document production has been extraordinary. And in evaluating all of this, I think it's important to keep in mind—and I submit for the record an article, an op ed piece from The New York Times entitled Docudrama by Sydney Herman.

Let me just quote from that briefly. This is Mr. Herman, who's a lawyer and apparently a former partner of Kenneth Starr's, writing in The New York Times on January 27th:

Documents that are relevant to an investigation are found in an unexpected place 6 months after they were first sought. A shocking development?

Absolutely not. In most major pieces of litigation, files turn up late. One side or the other always thinks of making something of the late appearance, but these lawyers know the truth: It could just as easily happen to them.

Despite diligent searches, important papers in large organizations are always turning up after the initial and follow-up searches.

Then later, he goes on to say:

My former partner, Kenneth Starr, knows all this. As Independent Counsel in the Whitewater investigation, he will take it into account.

But the American people have no reason to know that this is a normal occurrence; it is not part of their everyday experience. Reporters really don't have any reason to know this either, or they may know and simply choose to ignore it.

When documents show up belatedly, even in private quarters, there is simply nothing unusual about it.

I put that in the record to give us some context as we try to evaluate this question of document production. I along with others would wish that all documents came in right at the beginning, immediately. But it doesn't simply work that way. The OTS itself sent us a letter about documents that turned up later, after they had been requested. And in fact, I brought that to the Committee's attention at an earlier time, and included those documents in the record as well.

So, I think it's important to keep some perspective on this as we continue to deal with the very broad requests that this Committee has made for documents.

Senator Dodd.

[No response.]

Mr. BEN-VENISTE. Mr. Ickes, since we keep coming back to Beverly Bassett Schaffer, let me again state—and I mentioned this just a moment ago informally to Senator Mack, who had to leave—that the law is that no one owns a witness, even if the Department of Justice was seeking to interview, or indeed, had interviewed Ms. Schaffer in connection with any investigation they were conducting.

It would have been entirely appropriate for someone interested in that matter to send a representative to interview Ms. Bassett, or to encourage Ms. Bassett to come forward publicly.

Only if there was some corrupt intent to have her change what she said from the true version of events, would there be anything untoward or improper. Indeed, there is a substantial body of case law that suggests that an attorney representing a client who has an important stake in the matter who neglects to interview an important fact witness, may well be guilty of malpractice of law.

So let's be absolutely clear here, and perhaps this has all flowed from the suggestion last week. I think in the heat of the moment, some misstatements were made about the law, that Ms. Bassett was somehow radioactive, and no one could approach her. That is nonsense.

Now, Mr. Waldman has been alluded to. He has given testimony, last evening in deposition. His testimony is that he made no approach to Ms. Bassett. So that should be clarified. And I think that will come out in due course.

Mr. Lindsey has testified at some length about the fact that, following the President's comments on the newspaper article you were showing, he talked, not with Ms. Bassett, but to Ms. Bassett's husband, Archie Schaffer. Let me read Mr. Lindsey's testimony before this Committee, in response to Senator Faircloth's question:

Senator FAIRCLOTH. Would you tell us what was discussed in plain language, just you tell me?

Mr. LINDSEY. Yes, sir. Beverly Bassett during the campaign had put out, spoken to the press, spoken to Mr. Gerth. In fact, I later learned, wrote three memos to Mr. Gerth describing what her role had been during the late 1980's in the regulation of Madison Guaranty.

As I say, I've reviewed the records; I reviewed a chronology of what she did, what occurred. I believe that any reasonable person who looks at that will find that she went out of her way to try to bring this to the proper regulator's attention, and to get action. She communicated that during the campaign. Obviously, we wanted her

to continue to communicate that. She was reluctant to do so. She was reluctant for several reasons.

Now, Mr. Lindsey is alluding to his conversations with Archie Schaffer:

Number one, I think she was reluctant because she had spent so much time with Mr. Gerth, and she felt like the treatment that she received in The New York Times article and in other articles was not fair, did not reflect the information she provided.

Another reason was, during the same time period, there were people who basically were, I will use the word stalking because I believe Ms. Bassett has used that word. In fact, one of your current employees, Mr. Bossie, went to Fayetteville in early January 1994, and according to Ms. Bassett stalked her from one place to another.

Senator FAIRCLOTH. He was not an employee of mine.

Mr. LINDSEY. That's right. He is now.

Senator FAIRCLOTH. I didn't know him.

Mr. LINDSEY. He was working for Citizens United. Floyd Brown's organization, I believe, at that time.

So the testimony was quite clear from Mr. Lindsey before this Committee, indeed, that there was an attempt to get Ms. Bassett to come forward. We've heard that, and Mr. Lindsey has been subjected to extensive examination on that subject.

Senator DODD. Could I inquire, by the way, Mr. Chairman, I gather this has been distributed here today. It just occurred to me, I am looking at it here, and I see where Counsel raised the name of one of the staff here, Mr. Bossie. There's a letter—I don't know what the date of this letter is—there's no date on it, from a Floyd Brown, President of something called Citizens United.

The reason I raise it with you, Mr. Chairman, is a couple of things. If you don't have it, I'll let you have this copy here. The letter says a couple of things that I think ought to be of concern to everyone on the Committee. This is a "Dear Fellow American" letter. Paragraph three or four: "Our top investigator, David Bossie, is on the inside directing the probe, a Special Assistant to Senator Faircloth of the U.S. Senate Whitewater Committee."

First of all, I don't know if Mr. Chertoff would like to know someone else is directing the probe here, but our top investigator, is he employed by Citizens United, and employed by the Congress?

This is a fundraising letter in which Mr. Brown, who many may recall was the author of the Willie Horton ads, by the way, to give you some idea of his political credentials. But I quote him from his letter, the last page of a 4-page letter. "I already have Whitewater briefings scheduled for Members of Congress going on." Then there is a solicitation of \$100, \$500, and \$1,000. You know, if we're going to be supporting these outside groups who have staff members working for outside groups as investigators on the Committee, I think it's something the Committee ought to look at or am I off-base on that, Mr. Chairman?

The CHAIRMAN. Well, Senator, if we're going to hold the Committee responsible for every group that writes letters or takes positions on the activity of the Committee, we would be in bad shape. This is the first time I've seen this letter. I don't know Floyd Brown.

Senator DODD. I don't know him, either.

The CHAIRMAN. I've never had contact with him. The reason I feel compelled to say that is because if we're going to do this, let's take a look. It says at the bottom of the first page—this was just handed to me. And again, I thank Senator Sarbanes for handing

it to me. I don't know how it even came into this hearing. I understand that the White House released this today.

Senator DODD. It was sent to thousands of people.

The CHAIRMAN. I wish they would get the information we have requested and stop scouring for things to divert attention; and that's pretty obvious. The failure to produce these documents is a very serious matter.

Ms. Sherburne is in attendance. If you had these documents that Mr. Ickes had, you would have produced them.

Senator DODD. Mr. Chairman, I'm asking you a question.

The CHAIRMAN. Let me just say, with the assistance of Citizens United, it says:

Senator Faircloth is determined to find out. He's asked Whitewater Committee Chairman Al D'Amato to call Hillary Rodham Clinton before the Committee in which she will be forced to answer questions under oath.

But Senator D'Amato declines to call the First Lady to appear. In my opinion, Senator D'Amato is worried that he lacks sufficient public support to call the First Lady in front of the proceedings that might subject her to future criminal procedures.

That explains why I have been getting these phone calls in my office berating me the last couple of days, I really have. They want me to call Floyd Brown—not Floyd Brown. Who's that fellow? Larry Nichols? I won't be swayed by Brown, or Nichols, or anybody else. And I think you know this, Senator. You are my friend and colleague.

Senator DODD. My concern is that we have a staff member here on the Committee who is not the top investigator.

The CHAIRMAN. Sure, and they said I am afraid to do what I have done, and I am going to characterize you and others. We cannot respond to the Browns and others of the world in terms of how they characterize us. Indeed, this investigation is not being run by anyone other than the Committee. Certainly, Mr. Bossie is not running this. But you can't prevent some from making a claim, and saying they have somebody in here.

Again, I think it is appropriate to move forward. We're going to be thorough, we're going to be comprehensive. It may be painful at times, but we will get the facts as best we can and be fair.

Senator DODD. You can understand, Mr. Chairman, whether it's the White House or others of us here, when they see a letter from Citizens United, a guy who has a reputation that is pretty bad—

The CHAIRMAN. Gee, if I put in every editorial comment, I could cite people in the media. You saw one that was just here, she left a little while ago. She's written the most vile and detestable things about me, about the manner in which—

Senator DODD. This is a fundraising letter, and identifies a staff member. This Committee is their top investigator. That seems to me something you might want to look at.

The CHAIRMAN. Let's look at it and find out if he is a member of their group. He's certainly not our top investigator. He's not on the Committee.

Senator DODD. He's their top investigator.

The CHAIRMAN. Are we going to say that this Committee is responsible for every person who sends out a fundraising letter?

Senator SARBANES. Senator Dodd does raise an important point.

Senator DODD. If a member of my staff working for an outside group raising money for Whitewater, Members of Congress would raise the ceiling.

The CHAIRMAN. Would you believe it or not? They actually send fundraising letters to say, "So-and-so—let's defeat him or her." We have all been the subject of that. I don't find this shocking, because there's no merit to it, it is part of the process. We can't control, Senator, every group that goes out.

Senator DODD. I know, Mr. Chairman, but we have testimony from a witness that talks about Mr. Bossie, to use their words now, not mine, "stalking" a witness, employed by this Committee, who's now called in the letter their top investigator, by groups soliciting \$1,000 contributions to go after Mrs. Clinton. Somebody ought to look at that.

The CHAIRMAN. Yes. OK.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I want to get back to January 1994, Mr. Ickes. I have before you a memorandum which is dated 1/12/94, Kendall, in your handwriting, talks about whether an Independent Counsel should be requested by the White House.

Mr. ICKES. That's 20797, Mr. Chertoff?

Mr. CHERTOFF. Correct. And you don't know whether you got this from Kendall, or you sent it to Kendall; correct?

Mr. ICKES. I don't know. To the best of my recollection, I don't.

Mr. CHERTOFF. Did you write it?

Mr. ICKES. No, I did not. As far as I know, I did not write it.

Mr. CHERTOFF. You see under Roman numeral III, it talks about "The wisdom of attempting to impose limitations, desirability of limiting the investigation." Did you discuss that with Mr. Kendall?

Mr. ICKES. I don't recall whether I discussed this document with Mr. Kendall or not.

Mr. CHERTOFF. Attached to this package of documents is S20801 and 802, which is a draft of a letter to the Honorable Janet Reno which requests a preliminary investigation by Special Counsel.

Mr. ICKES. Mr. Chairman, let me tell you what I have here. I have 20798, 20799, and then I have 20800. And that's it.

Mr. CHERTOFF. There is another one, 801 and 802. I will get you the documents.

Mr. ICKES. Wait a minute. OK. We are looking now at what, 801 and 802?

Mr. CHERTOFF. 801 and 802, right. That's a draft letter to the Honorable Janet Reno that concludes with a suggestion that a preliminary investigation begin with respect to the appointment of a Special Counsel. It says in the top right-hand corner, there's a notation. Is it your handwriting?

Mr. ICKES. Generally seem to be, yes.

Mr. CHERTOFF. It says, "DK draft."

Mr. ICKES. Yes.

Mr. CHERTOFF. Does that mean David Kendall wrote this draft?

Mr. ICKES. I don't know whether it meant that he wrote this draft. It may well.

Mr. CHERTOFF. Was it the way you operated in the Whitewater response to you in the White House, that in considering what posi-

tion the White House ought to take on an Independent Counsel, you solicited the input of the President's private attorney with respect to the actual form of the letter that was going to be sent to the Attorney General?

Mr. ICKES. I don't know. I am not saying that I solicited this. I doubt that I did. As I said before, Mr. Chertoff, a lot of people who were advising the President, both inside the Government and outside the Government, had a variety of different views with respect to Independent or Special Counsel, as he was called in those days.

Mr. CHERTOFF. But you included Mr. Kendall in the discussion, and in fact, you included Mr. Kendall in the discussion of the exact form which the letter ought to take.

Mr. ICKES. I don't know if I included him, or whether he drafted this on his own.

Mr. CHERTOFF. You think he came unsolicited over the transom?

Mr. ICKES. He may well have drafted it on his own, and sent it to me. Assuming that he drafted it—and I don't know that as a fact, Mr. Chertoff.

Mr. CHERTOFF. Can we assume that when you wrote "DK draft" at the top, that that refers to David Kendall?

Mr. ICKES. We can assume that refers to David Kendall. That does not automatically mean he drafted the letter. I'm not saying he didn't. I don't know whether he did or whether he didn't.

The CHAIRMAN. You sent it to him, though, right? It's one or the other. If he did not draft this, then what is the only reasonable conclusion that one can come to? That you then sent it to him?

Mr. ICKES. I don't know whether I did, or whether I didn't.

Mr. CHERTOFF. But the point is, Mr. Ickes, there's only two possibilities in the universe of logic.

Mr. ICKES. I assume that I am here to answer questions under oath to the best of my recollection, not to speculate.

Mr. CHERTOFF. But we're asking about a notation and a writing that you made in your own handwriting. I am not asking what Mr. Gearan said, or Tom Jones said. I am asking you what you wrote. And my question to you is, does your notation, "DK draft" indicate either that you received it from Kendall or that you sent it to Kendall? Which is it?

Mr. ICKES. I don't know. I've testified that I don't know.

Mr. CHERTOFF. Now let's move on to another document.

Mr. ICKES. Furthermore, what's the point? Are you saying—

The CHAIRMAN. That's not your problem.

Mr. ICKES. Are you saying Mr. Kendall doesn't have a right to give his views about this?

Mr. CHERTOFF. I'll tell you what I'm saying, Mr. Ickes. I'm suggesting that there's a difference between a private defense attorney writing the letter under his own name to the Attorney General about a matter involving a client, which every attorney is entitled to do, and that same private defense attorney being invited to sit with White House policymakers in deciding what official position the White House is going to be taking on the Independent Counsel.

Particularly, Mr. Ickes, because we have heard testimony from Mr. Eggleston that 2 months earlier, the whole point of him sitting down with Mr. Kendall and Mr. Nussbaum was precisely to sepa-

rate the private sphere and the public sphere, that they were to be separate areas of responsibility. But I want to continue on this.

Senator DODD. One observation.

Mr. ICKES. Are you saying it's illegal for the private attorney to have done this, assuming that he did do it? Is that what you are saying? I'm just trying to get a drift of where you're headed.

Mr. CHERTOFF. Mr. Ickes, did he participate in the discussion about the scope of the Independent Counsel, and how the Independent Counsel's charter were to be set forth?

Mr. ICKES. Would you repeat the question?

Mr. CHERTOFF. Did Mr. Kendall participate in the discussions with you and the White House Counsel's Office about how to prepare the letter that was going to go to the Attorney General to delineate what would be requested in terms of the Special Counsel?

Mr. ICKES. I have no knowledge of that.

Mr. CHERTOFF. You don't know whether Mr. Kendall participated in it?

Mr. ICKES. In the discussions about the letter that went to the Attorney General? No, I don't.

Mr. CHERTOFF. You don't know whether he had input in some written form?

Mr. ICKES. He may well have. I don't know.

Mr. CHERTOFF. And you can't interpret for us what this "DK draft" means that you wrote in your own hand?

Mr. ICKES. I've told you to the best of my knowledge that "DK draft" refers to David Kendall draft. He may well have drafted this. I don't know as a fact, as I sit here today—let me finish, Mr. Chertoff—whether or not he did.

Mr. CHERTOFF. And it got into your file?

Mr. ICKES. What?

Mr. CHERTOFF. It got into your files; right? This is a production from your file.

Mr. ICKES. It was in my files.

Mr. CHERTOFF. And the fact is, it was in the files that were not produced until a few days ago; right?

Mr. ICKES. They were produced when they were produced.

Mr. CHERTOFF. Within the last week; right?

Mr. ICKES. They were produced when they were produced.

Mr. CHERTOFF. You don't want to answer that, do you, Mr. Ickes?

Mr. ICKES. I don't know when these were produced.

Mr. CHERTOFF. Do you know when you produced them to the White House Counsel?

Mr. ICKES. Mr. Chertoff, if you say these were produced 2 days ago, I'll take your word for it.

Mr. CHERTOFF. Let's move on to S20884, it is dated 1/10/94, Confidential, Second Draft, Summary of Arguments re Whitewater. Who wrote this?

Mr. ICKES. Wait just a moment.

The CHAIRMAN. The documents are in chronological order?

Mr. ICKES. Chronological order, or page order.

The CHAIRMAN. Chronological order in terms of the numbers that they indicate.

Mr. ICKES. This is dated when?

Mr. CHERTOFF. This is dated January 10, 1994.

Mr. ICKES. OK. I think I have it. This is dated 1/10/94, 20884?
Mr. CHERTOFF. Correct. This came from your files as well. Did you write this?

Mr. ICKES. No, I did not write this.

Mr. CHERTOFF. Who wrote it?

Mr. ICKES. I have no idea.

Mr. CHERTOFF. Was it someone in the White House?

Mr. ICKES. It may well have been. I literally don't know. It may well have been somebody in the White House.

Mr. CHERTOFF. Let me begin at the beginning. It says, "Summary of Arguments re Whitewater," and, "No Special Counsel: No. 1—For this position." Then there's a list of arguments about why there shouldn't be a Special Counsel.

In addition to some of the things we've heard discussed in the hearing about the policy considerations, there's a very interesting consideration that's under letter F. It reads as follows: "A SC investigation may result in focus on friends and associates of the President, begin to 'squeeze' them, and may subject some to indictment."

You understood, I take it, that the term "squeeze" them refers to the possibility that people could get, in the vernacular, kind of jammed up with criminal prosecutions, and might be squeezed, to have them turn and cooperate with the Government?

Mr. ICKES. I didn't write this memo. I'm not sure what the term "squeeze" meant.

Mr. CHERTOFF. You kept it in your file; right?

Mr. ICKES. The mere fact that I kept it in my file doesn't necessarily mean I knew what the term meant.

Mr. CHERTOFF. At the time you received the memo, presumably you knew who the author was; right?

Mr. ICKES. I'm not sure that I did.

Mr. CHERTOFF. You didn't try to find out what this memo, what this term "squeeze" meant?

Mr. ICKES. As far as I know, I have no recollection of trying to find out what the term "squeeze" meant.

Mr. CHERTOFF. Were there discussions with, say Mr. Waldman or Mr. Nussbaum about the fact that it was a Special Counsel investigating here? Some of the people around the President might get hurt? Was there discussion in Whitewater response meetings with Mr. Waldman or Mr. Nussbaum or anybody else who attended the meetings that a Special Counsel investigation might hurt some of the friends and associates around the Clintons?

Mr. ICKES. There may well have been. I don't recall any particular discussion. What I would like to do is to point out, on this particular document that you've referred to, Mr. Chertoff, that this is basically, as I look at it, is an options. It's laying out all the possible options for and against, Mr. Chertoff.

Mr. CHERTOFF. You're not answering my question.

Mr. ICKES. Let me just finish, if you don't mind. The mere fact that it refers to the fact that some friends and associates of the President begin to get squeezed I think in no way indicates that they were referring to this President, or his President.

Mr. CHERTOFF. Are we discussing Abraham Lincoln here or some other President? Which President? Are you telling us that you think this memo didn't have anything to do with this President?

Mr. ICKES. Do you want me to answer, Mr. Chertoff?

Mr. CHERTOFF. Yes.

Mr. ICKES. As I read this memorandum, Mr. Chertoff, this was trying to lay out all of the different arguments of what might happen, of what could happen based on the history of past Independent Counsels.

Mr. CHERTOFF. Now in the discussion, because we also have in Mr. Gearan's notes notations that on the 5th of January—I'm just going to summarize here—that Mr. Nussbaum had raised the issue of the bad-hearted prosecutor who might find things around people close, around the President. I want to ask you, in any of these discussions, when the following names came up of people that might be squeezed, or might be hurt, or might be the subject of investigations, did Mr. McDougal's name come up?

Mr. ICKES. I'm sure that a lot of names came up.

Mr. CHERTOFF. Did Branscombe come up? Did Temper come up? Did Hill come up? Did Wade come up?

Mr. ICKES. Mr. Chertoff, I suspect that a lot of different names came up in the course of the discussions here.

Mr. CHERTOFF. There came a point in time where, notwithstanding the First Lady's earlier strong opposition to a Special Counsel, a decision was made to write a letter to the Attorney General suggesting that a Special Counsel be appointed; right?

Mr. ICKES. I was not involved in that letter. I assume that there was such a letter.

Mr. CHERTOFF. I take it that one of the reasons that happened was because there was an understanding that, if Congress passed the statute authorizing an Independent Counsel by law, that the Attorney General might on her own go ahead and appoint an Independent Counsel, or request an Independent Counsel, but it would be appointed by a three-judge court; right?

Mr. ICKES. Are you asking me if that was the state of mind of the people who wrote the letter?

Mr. CHERTOFF. I'm asking you if that came up in discussions of the Whitewater Response Team.

Mr. ICKES. I don't recall.

Mr. CHERTOFF. Didn't it come up in discussion that you actually considered or discussed who the judges would be that would be making the appointment of the Independent Counsel if you waited for the statute to get passed, as opposed to requesting Special Counsel to be appointed by the Attorney General?

Mr. ICKES. I'm sure I don't remember any specific discussion, Mr. Chertoff. But I'm sure that when the subject of Independent Counsel came up, there undoubtedly was a discussion of the process, and who would be involved in that process.

Mr. CHERTOFF. Once the letter was written, or once the Attorney General decided to appoint a Special Counsel, that issue moved off the radar screen. But that wasn't the only investigation you all were considering in the Whitewater Response Team, was it?

Mr. ICKES. I don't know what you're referring to.

Mr. CHERTOFF. You were considering civil investigations, as well as the criminal investigation; right?

Mr. ICKES. In the Whitewater Response Team, we were considering all matters that were being asked of us by the press.

Mr. CHERTOFF. Well, more than just the press, because once the matter of the criminal investigation passed to the jurisdiction of the Special Counsel, there was still the question of whether there would be a civil investigation by the RTC that might touch on these matters; is that correct?

Mr. ICKES. As I recall. I don't know what period of time you're talking about, Mr. Chertoff. But as I recall, that was a matter of discussion in the press, as well as by Members of the Senate.

Mr. CHERTOFF. The Whitewater group actually focused on the issue of what the statute of limitations for civil actions would be, as early as the 9th of January, 1994; isn't that right?

Mr. ICKES. What document are you looking at?

Mr. CHERTOFF. I'm looking at your memo of the 9th of January, 1994, where it says, "assignments." If you can pause for a second, it's at S20888.

Mr. ICKES. I apologize. I thought these things—this is the one of January 10th, Mr. Chertoff? Or is there going to be a light on, Mr. Chertoff?

The CHAIRMAN. I don't run the time when he is looking for the documents. I could waste 15 minutes for him looking for one document.

Mr. ICKES. Mr. Chertoff, I have both in front of me now, one dated the 10th and one dated the 9th.

Mr. CHERTOFF. The one dated the 9th says, "Memo, Re: Statute of Limitations for Civil Action. Counsel assigned 1/8." Is that right?

Mr. ICKES. The memo dated the 9th, item number nine?

Mr. CHERTOFF. That's item number 11.

Mr. ICKES. I'm sorry. Yes.

Mr. CHERTOFF. As of January 8, 1994, you had assigned an attorney to do a memo on the statute of limitations for civil actions; is that correct?

Mr. ICKES. Yes.

Mr. CHERTOFF. In fact, it had come up in discussion on January 8th because, as you previously told us, this memo was a distillation of your notes of these conversations; right?

Mr. ICKES. Yes, and as I recall, the statute of limitations was being discussed at that time.

Mr. CHERTOFF. So you asked for a memo on January 8th; right? Then it appears again on your memo of January 10th, once again, that you reiterate that this is one of the events, or one of the issues, where there's a pending assignment; is that correct?

Mr. ICKES. That's correct.

Mr. CHERTOFF. Then, as we observed earlier with respect to your handwritten notes on the first page of your notes on the January 16th meeting, the subject of the statute of limitations came up at the meeting at Vernon Jordan's house; is that correct?

Mr. ICKES. According to those notes, it did.

Mr. CHERTOFF. Then you, in fact, even got a memo from Mr. Ickes on January 17th—I'm sorry, from Mr. Eggleston to you? Mr. Eggleston wrote you a memo on January 17, 1994, discussing the statute of limitations?

Mr. ICKES. That's document 9908?

Mr. CHERTOFF. Right.

Mr. ICKES. Yes.

Mr. CHERTOFF. So we had all this attention to the statute of limitations. Now, I must ask you this. Two weeks after you got that memo from Mr. Eggleston, you had a meeting on February 2nd with Mr. Altman where we were told, 2 years ago, that the purpose of the meeting was to have Mr. Altman come in and brief the White House on the law involving the statute of limitations.

At the time we were asking questions 2 years ago, of course, we didn't have that January 17th memo. We didn't have all these other notes. We were kind of groping, like blind men.

But in any case, you were asked a question about this February 2nd meeting by the RTC investigators. I want to give you a portion of your sworn deposition taken on July 15, 1994, before the Department of Treasury, Office of Inspector General investigators. I want to direct your attention to page 7. Just take a moment to find that.

Mr. ICKES. I found it.

Mr. CHERTOFF. I will read you the following questions and answers, at page 7, line 3:

Question: Would this be February 2nd, 1994, this meeting?

Answer: It would have been around that time.

Question: You said Mr. McLarty was there?

Answer: It was in his office. He was there in his office. It's a fairly large office by White House standards and I recall his being near his desk at the other end of the room. I don't recall his participating in the meeting and my best recollection is that he left his office soon after the meeting started.

Question: So did he participate at all in the meeting?

Answer: Not to my—not to my recollection.

Question: What was discussed at that meeting?

This is February 2nd, now, Mr. Ickes, 2 weeks after you got the memo from Eggleston, and more than 2 weeks after all these discussions that we have in these memos have been covered.

Answer: Mr. Altman, as I recall, raised the issue of the upcoming—the possible—well, not the possible, but the fact that the statute of limitations, which I knew nothing about at the time, of the RTC in connection with an investigation that was apparently being conducted by the RTC on Madison Whitewater was about to expire.

I want to underscore and direct your attention in particular to the phrase that says, "the statute of limitations, which I knew nothing about at the time." I want you to compare that with the memo you received 2 weeks earlier, at your specific direction and request, that in fact stated on page 2—Mr. Eggleston stated that the statute of limitations would run out on any possible tort claim on March 2, 1994.

I want to ask you, Mr. Ickes, with respect to this deposition you gave before the RTC, were those the answers you gave to those questions? Is this an accurate transcription of your sworn testimony as you gave it in 1994?

Mr. ICKES. As far as I know, sir.

Mr. CHERTOFF. My time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Are we going to take a break for lunch, Mr. Chairman?

The CHAIRMAN. We still have quite a few questions, but we will take a short lunch break and resume promptly at 2:15 p.m.

[Whereupon, at 1:40 p.m., a lunch recess was taken, to resume at 2:15 p.m.]

AFTERNOON SESSION

The CHAIRMAN. The Committee will come to order.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Mr. Ickes, first let me address an issue about which much was made before our luncheon break. And that is the question of Mr. Kendall, an attorney in the private practice of the law, supplying a draft letter for consideration by White House Counsel regarding appointment or a request to the Attorney General to appoint a Special Counsel. First, is there any rule or regulation that you know of that has been recently enacted that forecloses the President or his Counsel from receiving advice from any nongovernment source?

Mr. ICKES. Well, I'm not much of a lawyer, Mr. Ben-Veniste, but none that I know of.

Mr. BEN-VENISTE. It is kind of surprising to hear that there would be any suggestion that Presidents and their Counsel do not rely on people outside Government to provide advice and thoughts.

Mr. ICKES. This President, and it is certainly my understanding historically, that other Presidents have relied on the broadest range of advice from both inside and outside the Government on the broadest range of matters.

Mr. BEN-VENISTE. So what we're really talking about here is discussions within the White House and, indeed, we've talked about 2 weeks of intense meetings. I see meetings occurring from January 4th through January 8th, and then some assignments thereafter. I don't see where that's 2 weeks. But there are meetings in January that surround this question, among others, of appointment of an Independent Counsel. The first reaction, and we will get to some of the reasons for this, from the First Lady and perhaps the President, is an unfavorable reaction to the notion of this kind of appointment, given the circumstances predicated or allegedly predicated such an appointment.

Eventually, what happens is the President, through his Counsel, asks his Attorney General to appoint a Special Counsel to investigate these matters in which the President is interested. Correct?

Mr. ICKES. Correct.

Mr. BEN-VENISTE. This is a proposition that has been sponsored, among other people, by Republican leaders of the Congress, including the Chairman of this Committee and Senator Dole, in correspondence that we have reviewed with you. Correct?

Mr. ICKES. Correct.

Mr. BEN-VENISTE. So that at this point, the newspapers are clamoring for the appointment of a Special Counsel. The Republican leaders of the Congress are taking the same position, and now the President is taking the same position. The only person that we are hearing who is opposed to it is the Attorney General herself. The reason she's opposed to it are borne out by history, which is that no matter how terrific an appointment I make, and she made a terrific appointment, in my view, in Robert Fiske, a former U.S. Attorney from the Southern District of New York, who did an outstanding job during his service as Special Counsel. And her predictions came true with the passage of the Independent Counsel Act by the Congress when a three-judge panel removed Mr. Fiske simply because Ms. Reno had appointed him.

Mr. ICKES. Exactly.

Mr. BEN-VENISTE. In fact, just to show that nobody is really infallible, I have an editorial from December 26, 1993, of The New York Times, which says:

Ms. Reno has refused—relating to the appointment of a Special Counsel—arguing that any Special Prosecutor she appointed would be seen as less than fully independent.

Nonsense. Her appointee would be perceived as independent if he or she had a reputation for courage, competence, and integrity.

Well, of course, her appointment was widely hailed by Members and, indeed, the Chairman of this Committee and others, people respected in the legal community and in Washington as well. Yet, despite The New York Times' prediction that it would be nonsense, that appointment was overturned by a special court of the U.S. Court of Appeals, solely on the basis of the fact that it was an appointment made by the Attorney General.

So let me now go again into the facts of what occurred and whether these documents recently obtained are indeed remarkable in providing information that we did not know about previously. Or whether, in fact, this is just more of the same information that has been written about for the last 2 years, at least.

First of all, the question of whether the White House, or at least the senior staff, opposed the appointment of a Special Counsel, initially, in considering the options that were available. In fact, Mrs. Clinton, in her press conference of April 24, 1994, was specific, was she not, in terms of her reaction against the appointment?

Mr. ICKES. She was. She said, as I recall that press conference, that she had—and I'm paraphrasing—at the very least, very, very grave reservations about it. And she may have even said that she was opposed to it, as were other advisers to her husband.

Mr. BEN-VENISTE. What were the reasons that were given in the discussion in which you participated for the opposition to the appointment of Special Counsel?

Mr. ICKES. I think, to try to summarize, and there were a lot of discussions back and forth, Mr. Ben-Veniste, to summarize, I think there were three or four points that were made.

Number 1, that there was no evidence of wrong-doing sufficient to warrant the appointment of a Special Counsel.

Number 2, sort of a corollary to that, that if a Special Counsel were appointed based on mere allegations without some showing of wrong-doing, that it would set a bad precedent and that we would have Special Counsels appointed at the drop of any allegation.

Number 3, it was the First Lady's very strongly held view then, as it is now, that neither she nor the President had done anything wrong; and therefore, there was no reason for a Special Counsel. Others argued that, in the past, Special Counsels or Independent Counsels, had gone beyond, had taken an overlong time to carry out their mandate, one. Two, had gone beyond their mandate, and I think that Senator Dole felt very strongly on that issue and during 1992, had raised that on more than one occasion when the Independent Counsel statute was up.

And then, finally, there was the Attorney General, who is known for her independence, had appointed or designated, whatever the right term is, several career prosecutors within the Department of

Justice to conduct a full-blown, as I understand it, no-holds-barred investigation of this situation.

So those were the basic arguments. There may have been some backing and forthgoing, but I think that those were the basic points that were made.

Mr. BEN-VENISTE. And despite the initial discussions and oppositions, within a very short period of time, the determination was made that a request would go to the Attorney General, who had been extremely reluctant and perhaps had, in the words of Mr. Gearan, closed the door all but a crack. Maybe closed it, but not locked it and bolted it. That in spite of her previous announced views, that she should go forward and appoint the Special Counsel.

Mr. ICKES. That's correct.

Mr. BEN-VENISTE. Now the notion that this is new, I think, can be best reviewed from a standpoint of looking at the newspaper stories from back in January 1994, when all of this occurred, and looking at the newspaper story from last week. We've taken some extracts out. Maybe we could put these up on the Elmo. Let's read first from a story which appeared in The Washington Post.

Senator DODD. Can you make that clear? I can't read it.

Mr. BEN-VENISTE. Let's just focus in on the first two paragraphs, then it will be larger. This is from the January 7, 1994, Washington Post:

With the start of the New Year, the White House launched a major internal effort to fight back against mounting criticism of the way it has handled inquiries into President Clinton's Arkansas land investments. A high-powered damage control squad was appointed, under the direction of new Deputy Chief of Staff Harold Ickes, and daily strategy sessions began.

Here is the same lead paragraph from the February 16, 1996, Washington Post:

Four days into the New Year of 1994, top White House aides gathered in the office of then-Chief of Staff Thomas F. "Mack" McLarty for the first meeting of the "Whitewater Response Team," created to deal with a controversy that was mushrooming by the day.

Then look at the second paragraph from the 1994 story:

White House Chief of Staff Thomas F. "Mack" McLarty designated Ickes to lead the new team, composed of Bruce Lindsey, Clinton's long-time Arkansas political aide, Counselor David R. Gergen, Senior Adviser George Stephanopoulos, White House Communications Director Mark Gearan, and outside political advisers such as Paul Begala and James Carville.

And then from the story last week:

They talked about news stories raising new allegations of financial misdeeds by the President and the First Lady back in Arkansas, about demands for documents and a Grand Jury probe. But most of all they focused on the increasing demands for the appointment of an Independent Counsel. David R. Gergen, the old Washington hand among them—who had served several Administrations, including the Nixon White House—observed that such investigations tend to "take on a life of their own."

So the notion that there was this Response Team, the issues that they were covering, the fact that Mrs. Clinton opposed the appointment of an Independent Counsel, all of that was written about 2 years ago. It is reflected in the documents that we have from Mr. Gearan and from you and from other materials which we have had well before that. But the issue which I think Senator Dodd quite properly has raised here is whether there's anything new or indeed,

important, for purposes of our inquiry in the materials that we have just received.

Now the issue has been raised, I believe by my friend, Mr. Chertoff, in his questioning before the lunch break, about whether there was something sinister or inappropriate or untoward in a discussion of the appointment of a Special Counsel as opposed to waiting until such point that the Independent Counsel statute might be enacted and then the appointment of an Independent Counsel pursuant to the provisions of whatever that statute might be. Do you recall that discussion?

Mr. ICKES. I recall the discussion shortly before our lunch break, yes.

Mr. BEN-VENISTE. Well, under those circumstances, could you relate, if you will, your recollection of, rather than this hypothetical discussion of what might happen under a law not yet enacted, what were the actual realities of the circumstance and who was calling for the appointment of a Special Counsel back in January 1994?

Mr. ICKES. Well, other than for the press and a number of Members of the Congress, there were people inside of the White House who felt that that was the better way to go, that ultimately, it was going to end up there in any case, and why not go ahead and call for the appointment of a Special Counsel?

Whether or not a statute that would permit the appointment, if that's the right phrase, of Independent Counsel, would be enacted or not and if so, when, was very much up in the air.

And there was concern voiced by some people that if the Attorney General appointed a Special Counsel, would that then end up with that investigation starting to get underway, and then a three-judge court, assuming the former model was re-enacted for the Independent Counsel, would a three-judge court then put in place a new person who would have to start the investigation, not necessarily all over again, but certainly pick up.

Those were some of the arguments that were weighed back and forth and different people had different opinions on that, and some of them very strongly held opinions, as it should be when you are advising the President of the United States.

Mr. BEN-VENISTE. Thank you.

Mr. Chairman, my time is up.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Ickes, are you telling us that you welcomed the manner in which the career prosecutors at the Justice Department were conducting their investigation of Madison Guaranty and Whitewater in December and early January of 1993 and 1994?

Mr. ICKES. I didn't say I welcomed it or didn't welcome it. I said it was a fact that the Attorney General had designated one or more career prosecutors, some of them Republican of some outstanding note, and former U.S. Attorneys, to conduct an investigation into this matter. I didn't know the scope of it or anything like that.

Mr. CHERTOFF. But you were angry about it.

Mr. ICKES. What?

Mr. CHERTOFF. You didn't like the way they were conducting the investigation.

Mr. ICKES. No, that's not true, Mr. Chertoff.

Mr. CHERTOFF. Well, Mr. Gearan records—

The CHAIRMAN. Refer to the page.

Mr. CHERTOFF. It's Mr. Gearan's notes, S 20579.

Mr. ICKES. 20579?

Mr. CHERTOFF. Right. It's a meeting in the Ward Room.

The CHAIRMAN. Let's wait until he gets it. Do you have it?

Mr. ICKES. Bear with me one moment. I'm getting there, got it.

Mr. CHERTOFF. "Whitewater, 8 January, Ward Room. BN argue against Special Prosecutor." Then there are the initials, HI, which Mr. Gearan has indicated is you.

Mr. ICKES. Yes.

Mr. CHERTOFF. "Alan Carver at DOJ, bad guy." Why did you say Mr. Carver was a bad guy?

Mr. ICKES. First of all, these are not my notes. I am not at all confident I said that, number one. Number two is I didn't know Mr. Carver. To this date, I wouldn't know him if he came in this hearing room, as far as I know, I have never met him. I may well have been saying something that I heard somebody else say. But, in any event, he was conducting an investigation and I had no problem with the investigation he was conducting. I didn't know the limit of it, but the Attorney General had appointed him and he was carrying on.

Mr. CHERTOFF. Did you say he was a tough guy?

Mr. ICKES. What?

Mr. CHERTOFF. Did you say he was a tough guy?

Mr. ICKES. I don't recall saying anything about Mr. Carver because I don't know whether he's a tough guy or not. It may well have been that I was quoting somebody else.

Mr. CHERTOFF. Well, Mr. Gearan was usually accurate enough in most cases to even replicate the blue language. So let's continue on here. "When Kendall called, when he called on speakerphone, were two FBI agents and Jim Nixon." What was that about?

Mr. ICKES. My understanding was and, again, I do not know where I got this from—perhaps Mr. Kendall—that when he called to talk to either Mr. Carver or whoever, that either two FBI agents were on or that they were brought into the room while he was speaking to them. That was my understanding. I wasn't there, so I don't know what the facts were.

Mr. CHERTOFF. But you repeated this. You repeated this in the meeting.

Mr. ICKES. It appears that I may well have repeated it.

Mr. CHERTOFF. Why did you find it worth repeating?

Mr. ICKES. What?

Mr. CHERTOFF. Why did you find it worth repeating?

Mr. ICKES. Well, I think as Chairman D'Amato pointed out, that he might have used a little stronger language had he been on the phone with somebody and the Justice Department and FBI agents were also on the phone.

Mr. CHERTOFF. Really, Mr. Ickes? You think that it's really that outrageous to have a conversation if you're a prosecutor and have FBI agents in on the conversation, too?

Mr. ICKES. I didn't say it was outrageous. I just said that stronger—I'm just following Chairman D'Amato's lead that—

Mr. CHERTOFF. Let's not follow—

Mr. ICKES. Let me just finish this.

Mr. CHERTOFF. I want your opinion.

Mr. ICKES. You asked me a question. I'm answering it.

The CHAIRMAN. Nonresponsive.

Mr. ICKES. I am answering it. As Chairman D'Amato said, he would probably have used even stronger language.

Mr. CHERTOFF. We are not concerned with what anybody else said. Did it upset you to hear that there were two FBI agents on the phone, on the speakerphone in the conversation?

Mr. ICKES. I think that if I am on the phone with somebody thinking that I am having a private conversation and other people are listening to it, I would be unhappy.

Mr. CHERTOFF. You are not suggesting that what happened here was that the agents and Jim Nixon were on the phone unbeknownst to Kendall?

Mr. ICKES. I don't know what they were.

Mr. CHERTOFF. Then you go on to say, "Those guys are f---ing us blue." What did you mean by that?

Mr. ICKES. I think that—where are you looking now?

Mr. CHERTOFF. Right in the section next to the initials HI.

Mr. ICKES. Again, I don't recall saying that. If I said it, it was that they were probably doing an effective job.

Mr. CHERTOFF. That they were doing an effective job? The expression, "f---ing us blue," means doing an effective job?

Mr. ICKES. Again, I don't recall saying that. But if I said it, it's probably what it meant.

Mr. CHERTOFF. I mean, have you ever used the expression—I can only imagine what kind of conversations. Have you ever used the expression, "f---ing us blue," to compliment someone on doing an effective job? What did you mean by this? This is striking—

Mr. ICKES. I've testified to what I—

Senator DODD. Mr. Chairman, this strikes me as sort of one of those expressions that sort of speaks for itself.

Mr. CHERTOFF. But evidently, it speaks to Mr. Ickes much differently than it speaks to everybody else.

Senator DODD. All right. Let's move on, though. This is—

Mr. CHERTOFF. What we're talking about here, Mr. Ickes, is not your use of language, but it is an attitude that's manifested in Mr. Gearan's notes. You don't know of any reason that Mr. Gearan had to lie in his notes or to mislead in his notes, do you?

Mr. ICKES. Mr. Gearan, I don't believe that he lied, but he took these notes and people hear different things at different times.

Mr. CHERTOFF. Well, he was the Director of Communications, do you have reason to believe he was inaccurate in his ability to recall things or inaccurate in his ability to express himself? He's a very effective communicator, isn't he?

Mr. ICKES. It depends on how you look at it. I think he's quite effective.

Mr. CHERTOFF. I mean, he wouldn't have been the Director of Communications if he wasn't capable of understanding and speaking English well. Right?

Mr. ICKES. I understand, Mr. Chertoff. But taking notes, different people take different notes in different ways.

Mr. CHERTOFF. So your testimony is that you didn't say that Alan Carver at DOJ was a bad guy and you didn't express your

hostility and anger at the Department of Justice in the way that they were conducting this investigation?

Mr. ICKES. Mr. Chertoff, I've testified to what I've said.

Mr. CHERTOFF. I don't think you, to be quite honest with you, have squarely answered the question. And I want to suggest to you, Mr. Ickes—

Mr. ICKES. Well, Mr. Chertoff, I've answered the question.

Mr. CHERTOFF. Let me ask you the question.

Mr. ICKES. You may not like the answer, but I've answered it.

Mr. CHERTOFF. No. I want to suggest to you, Mr. Ickes, that the clear and unmistakable thrust of the notes is that you were expressing in very strong language your hostility and anger at the investigators at the Department of Justice.

Senator DODD. Mr. Chairman, again—

The CHAIRMAN. Now, Senator.

Senator DODD. No, I'm going to object. Counsel is not a Senator.

The CHAIRMAN. No, he's not.

Senator DODD. He's not a Senator.

The CHAIRMAN. Well, he's trying to get a responsive answer from Mr. Ickes.

Senator DODD. He's not a Senator. That's fine.

The CHAIRMAN. That's right, he is not, but he is our Counsel and I have not interrupted when you're asking questions.

Senator DODD. He doesn't editorialize.

The CHAIRMAN. Put the light on. Mr. Ickes, are you suggesting that you had no feelings one way or the other way about the conduct of this investigation?

Mr. ICKES. Mr. Chairman, I didn't know Mr. Carver. He was a career appointee.

The CHAIRMAN. That's not what I asked you.

Mr. ICKES. Mr. Chairman.

The CHAIRMAN. You had a meeting.

Mr. ICKES. Do you want me to answer?

The CHAIRMAN. At that meeting people were making their feelings known about what was taking place. I look at that meeting and it says—you tell me. Can you read that? "Whitewater, January 8th." Did you have a meeting in the Ward Room, January 8th?

Mr. ICKES. I don't recall. I assume we did.

The CHAIRMAN. That is a disingenuous answer. You had a whole series of meetings.

Mr. ICKES. I assume we did, Mr. Chairman.

The CHAIRMAN. Mr. Ben-Veniste just went through a whole series of meetings. It was public. You were the head of this team. You were appointed by Mr. McLarty, isn't that true?

Mr. ICKES. I don't even know what date the meeting was.

The CHAIRMAN. January 8, 1994.

Mr. ICKES. I don't know what date it was. I don't know what day it was in the week. I assume—

The CHAIRMAN. And you don't even know, when you say that someone's "f--ing you blue" what you meant. You say that was complimentary, that they were doing a good job. You want the Committee to believe that when someone took your notes down and in that kind of language, given the fact that just before you called them bad guys, given the fact that you just explained that, and

now you suggest to us that you had no feelings about this, that they were just doing their job. Is that what you would like us to believe?

Mr. ICKES. Do you want me to answer the question?

The CHAIRMAN. Yes.

Mr. ICKES. I think there was a concern, Mr. Chairman, on the part of some that FBI agents were listening in on a conversation with the President's private counsel. It's not at all clear to me that the private counsel knew that. You'll have to call him about that and ask him about that.

The CHAIRMAN. But you recounted this. You characterized this Mr. Carver who you didn't know as a bad guy, didn't you?

Mr. ICKES. Those are not my notes, Mr. Chairman.

The CHAIRMAN. I know they are not your notes, but you were at that meeting. You have no recollection of this meeting? This was an everyday occurrence? This was something that happened regularly? Were you at the meeting?

Mr. ICKES. Are you ready for me to answer?

The CHAIRMAN. Yes. Were you at the meeting?

Mr. ICKES. I assume I was at the meeting.

The CHAIRMAN. Do you recall a conversation with respect to a Special Prosecutor?

Mr. ICKES. I don't recall this particular conversation. But I have no reason to believe that there was not some conversation about the Special Prosecutor. It wasn't a Special Prosecutor, first of all.

The CHAIRMAN. Bernie Nussbaum argued against the appointment of a Special Prosecutor during the meeting of January 8th.

Mr. ICKES. I thought you were referring to Mr. Carver as the Special Prosecutor.

The CHAIRMAN. No. Let's move down to where it says HI, Harold Ickes; right? Mr. Gearan suggested that this reflects your statements and he said, you indicated that "Alan Carver at DOJ was a bad guy." You said that at some point in time you learned about this phone call with people listening in. You don't know who told you, but you learned about it. Is that why you characterized him as a bad guy?

Mr. ICKES. I do not know if that was my characterization, Mr. Chairman, or whether I was repeating something that somebody else had said.

The CHAIRMAN. OK.

Mr. ICKES. Which I testified to already.

The CHAIRMAN. Were you repeating something else when you said, "Those guys are f---ing us blue"? Or was that your feeling?

Mr. ICKES. Assuming that I said that—

The CHAIRMAN. Yes.

Mr. ICKES. —it was probably my view.

The CHAIRMAN. Well, you are the only person at these meetings that ever was quoted using that expression.

Mr. ICKES. Can I finish my answer?

Senator SARBANES. Well, let him finish his answer.

Mr. ICKES. Mr. Chairman.

The CHAIRMAN. Yes, certainly, Mr. Ickes.

Mr. ICKES. Thank you.

The CHAIRMAN. You're welcome.

Mr. ICKES. I think the fact that FBI agents were listening in on a private—well, why do you find that so amusing, Mr. Chairman?

The CHAIRMAN. You've told us that many times. I'm asking you whether you said, "Those guys are f---ing us blue"? Did you say it or didn't you? You think he made this up?

Mr. ICKES. Mr. Chairman, if you think what I am saying is so funny—

The CHAIRMAN. I think it is disturbing. Your explanation to this Committee is disingenuous.

Mr. ICKES. My explanation is my explanation, Mr. Chairman.

The CHAIRMAN. Yes, that's right, but it isn't convincing.

Mr. ICKES. You're welcome to your view, Mr. Chairman.

The CHAIRMAN. You come before this Committee and you want us to believe that when someone is quoted in this manner—and, by the way, only you used such expletives during these meetings. He's not confusing you with someone else. You characterize people as doing what is reflected in the notes, but that's a sign of admiration and an indication that they're just doing their job effectively?

Mr. ICKES. Mr. Chairman, I'll repeat for the fourth time. I don't know whether I said this or not. These are not my notes, and I could well have been repeating what others said.

The CHAIRMAN. Oh, about these guys doing this in this way.

Mr. ICKES. That's right.

The CHAIRMAN. OK.

Mr. CHERTOFF. Now, Mr. Ickes, I want to direct your attention to the notes of Ms. Sherburne and Ms. Chestin about your conversations with the President and the First Lady at the latter part of February or the early part of March 1994, which are S20783, 20784, and 20786.

Mr. ICKES. Bear with me one moment, please. OK, I have 20783. Is that what you're—

Mr. CHERTOFF. And 20784 and 20786.

Mr. ICKES. Wait just a moment please. 784 and 786. OK, I have them.

Mr. CHERTOFF. And they are two sets of notes of the same—

Senator DODD. Mr. Chairman, can I just inquire in this? As I understand it, just for clarity purposes, these notes are of a conversation that Ms. Sabrin or Sabrine—

Mr. CHERTOFF. No. These are two sets of notes taken by Ms. Chestin and Ms. Sherburne, who were at the White House Counsel's Office.

Senator DODD. Well, who are they talking to?

Mr. CHERTOFF. My understanding is it was information conveyed to them by Mr. Ickes' attorney.

Senator DODD. All right. That's Ms. Sabrin; right?

Mr. CHERTOFF. I don't know which attorney it was. If it was Ms. Sabrin, it was Ms. Sabrin.

Senator DODD. Well, now, just for clarity—

The CHAIRMAN. Well, for clarity, I see Mr. Bennett is indicating that it was Ms. Sabrin?

Mr. BENNETT. Yes, Mr. Chairman, Sabrin works with me.

The CHAIRMAN. OK.

Mr. CHERTOFF. Well, then, it was Ms. Sabrin who conveyed this information on behalf of Mr. Ickes to White House Counsel's Office

while they were in the course of conducting what they have testified to was an internal review or an examination——

Senator DODD. You're getting ahead of me a little bit. So it's Ms. Sabrin talking to Ms. Chestin.

Mr. CHERTOFF. And to Ms. Sherburne.

Senator DODD. And Ms. Sherburne is in the room as well.

Mr. CHERTOFF. And both of them record separately their notes of what was relayed to them on behalf of Mr. Ickes.

Senator DODD. But those are the only three people in the room, these notes.

The CHAIRMAN. We don't know if those are the only three people, but we understand who took the notes.

Senator DODD. OK.

Mr. CHERTOFF. So, now——

Mr. BENNETT. Mr. Chairman, those were the only three.

The CHAIRMAN. OK.

Mr. CHERTOFF. Fine.

Senator DODD. Thank you, Mr. Chairman.

Mr. CHERTOFF. By the way, Mr. Ickes, you'll acknowledge for the record that Mr. Bennett and Ms. Sabrin were your attorneys during July 1994, with respect to this matter. Correct?

Mr. ICKES. They were, yes.

Mr. CHERTOFF. They were authorized to speak on your behalf; is that right?

Mr. ICKES. They spoke on my behalf, yes.

Mr. CHERTOFF. Now going to the notes, "Late February (2/26 or 27), HI has conversation with WJC in which WJC asks lots of questions re: RTC procedures, whether HRC and WJC exposed." Ms. Chestin very similarly writes—"Late February (2/26 or 27)," possibly, probably. "HI conversation with President who asks serious questions re: procedure RTC, can Rose, HRC, BC be held liable." I would like to know, Mr. Ickes, what was said in this conversation or conversations with the President concerning RTC procedures and whether Rose, HRC, or BC could be held liable or exposed?

Mr. ICKES. May I talked to my attorney for a moment, please?

The CHAIRMAN. Certainly.

Mr. ICKES. I'm sorry, would you repeat the question?

Mr. CHERTOFF. What was said in this conversation or these conversations?

Mr. ICKES. In the conversations referred to here?

Mr. CHERTOFF. Yes.

Mr. ICKES. I don't recall having those kinds of conversations with the President, as I've testified on innumerable occasions before. I did talk to the President at some point and to the First Lady at some point about the statute of limitations. I don't know whether it was during February or whether it was during March. I don't know when the conversations took place. I don't know who was present. And as far as my recollection was, there was probably no more than one conversation with each.

Mr. CHERTOFF. Did you have a conversation with the President about whether Mrs. Clinton and the President could be held liable?

Mr. ICKES. Not as far as I can recall.

Mr. CHERTOFF. So you dispute the accuracy of the account contained in these notes?

Mr. ICKES. Mr. Chertoff, I wasn't at this meeting. I don't know the context of the questions that were asked. All I can tell you is what I recall then when I testified before this Committee, both in deposition and before this Committee in full hearing, and what I have testified to on other occasions.

Mr. CHERTOFF. Did you know your attorneys were going to have a conversation with the White House Counsel's Office in connection with the White House Counsel's review?

Mr. ICKES. I'm not sure I did.

Mr. CHERTOFF. I think maybe we're going to have to pursue some other witnesses on this, then, because I understand—well, it's interesting. I understand you essentially to be taking the position inconsistent with the notes.

Let me continue. "HI asked NE to draft memo which NE did in 12 hours." We've already examined your prior testimony in the deposition about this memo. But I want to get to the substance here. Ms. Chestin also says—"HI asked NE to write memo. Did within 12 hours." Did you ask Neal Eggleston to write a memo about the RTC and the Rose Law Firm procedures, and did he do so in about 12 hours? Is that true?

Mr. ICKES. I think I've testified before, Mr. Chertoff, that I did ask him at some point to write a memo and he did.

Mr. CHERTOFF. So you do——

Mr. ICKES. Whether it was in 12 hours or not, I don't know.

Mr. CHERTOFF. So you do remember asking him to write a memo about RTC procedures and the Rose Law Firm.

Mr. ICKES. I do recall asking him that.

Mr. CHERTOFF. And then it continues, "HI made revisions." Now that's the Sherburne version. And the Chestin——

Mr. ICKES. OK. What page are you on?

Mr. CHERTOFF. I'm still on 783 going into 784.

Mr. ICKES. OK.

Mr. CHERTOFF. "HI made revisions, sends to HRC 3/1. DR, don't recall discussing." And the Chestin version is, "HI asked NE couple questions, follow-up points, 3/1 HRC only. No recollection discussing with her or sending to President." Do you remember making revisions in the memo?

Mr. ICKES. I don't recall making revisions. I may well have, but I don't recall making them.

Mr. CHERTOFF. You sent it to the First Lady; right?

Mr. ICKES. I have testified extensively, Mr. Chertoff, that I may well have sent a memo to the First Lady. There was a long discussion, as you know, because you have questioned me quite closely on this, as to whether the memo had, in fact, been sent because my cover memo, the so-called transmittal memo, was not necessarily, was not in the form that I typically would send a memo. But I don't dispute that I may well have sent it to the First Lady.

Mr. CHERTOFF. But in fact, as the notes indicate, you did send this memo, didn't you? And you knew it in the summer of 1994 that you had sent the memo. Correct?

Mr. ICKES. Mr. Chertoff, as I say, I wasn't in this conversation. Ms. Sherburne and Ms. Chestin are not my attorneys. These are the notes that they took. You'll have to talk to them about that. I can only recall what I recall, and I've testified extensively to that.

I did not deny that I may well have sent that memo to the First Lady and I've testified about that extensively.

Mr. CHERTOFF. Ms. Sherburne then goes on to say, "HRC asked HI a few questions. Think after received memo." Did Mrs. Clinton ask you a few questions about the memo?

Mr. ICKES. I have no recollection—

The CHAIRMAN. I'm going to ask that we curtail this. I think it's better that we finish a particular area, but the Minority insists on strictly observing the red light, so we'll do that. I do not believe that's in the best interest of moving the hearings, but we will yield.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, we just have a fundamental difference of opinion. I think the only way we can have an orderly process is to follow the procedure that was laid out in the Resolution of the Committee. Now departing from that procedure by the Chairman of his own volition doesn't contribute to an orderly process, and I just think we ought to just follow the process.

The CHAIRMAN. I have not departed from my own volition and I have permitted extending time, nor have I even once, notwithstanding that the light on a number of occasions has flashed red, interrupted or attempt to interrupt. But I thought that we would have a better flow and be able to finish this.

However, I understand the nature of why some Members of the Committee may not want the details to be brought out in a manner in which they become more understandable. It will just take more time. We will be here later. It was my hope to attempt to finish this at 5:00 p.m., but we'll stay here and take whatever extra time it takes to finish this.

So, Senator Sarbanes.

Senator SARBANES. Well, I have no problem with that.

The CHAIRMAN. Fine. I understand.

Senator SARBANES. I mean, under our procedure, we can alternate back and forth with regular rounds.

The CHAIRMAN. Right. You can continue to read anything into the record that has nothing to do with examining the witness or trying to get new facts, but just kill time so you extend it longer. I'm suggesting to you I believe that's a technique that's being used.

Senator SARBANES. Well, I don't think we have done that, Mr. Chairman. I have sat here for days and Mr. Chertoff has said, I have one more question to ask, and then have it go on for 10 or 15 minutes. I have indicated to you on previous occasions, well before this witness ever came, that I didn't think that was contributing to an orderly process in this Committee, and that all of this could be avoided if we simply followed the clock and the procedures. All I'm asking for is to act in accordance with the Committee's processes and not to depart from them. That's all.

Senator Dodd.

Senator DODD. Just maybe a quick point. I wanted to go back. I thought I had it in front of me here, the memo dated 1/10/94. This is 20884. This is the memo that lists out the options, the summary arguments re Whitewater. No Special Counsel is the first heading, and then it goes, the second page, against this position, and so forth. Mr. Chertoff, I think, asked a lot of questions about

subparagraph F on that first page. Do you have that in front of you, Mr. Ickes? Do you have that memo?

Mr. ICKES. Yes. This is the one that's captioned, "Should an Independent Counsel Be Requested By White House?"

Senator DODD. No. The one I'm looking at here is "Confidential, Second Draft, Summary of Arguments re Whitewater."

Mr. ICKES. Yes, I have it.

Senator DODD. What I want to get at is—this is something, this is a procedure not uncommon to me. We do this in our office on issues. I don't presume I'm unique in this. There are matters that come up that are controversial and I solicit positions pro and con on what are the issues that could possibly come up? What are all the things you possibly do?

What I'm trying to get from you, is this sort of a standard operating procedure that you or others use at the White House on matters of some controversy where you solicit opinion memos that argue for and against a position within the same memo?

Mr. ICKES. Senator Dodd, this is a process that is used in the White House with respect to a vast array of issues, including Whitewater, as well as other substantive issues that are dealing with the President. I mean, we would be negligent, the staff would be negligent, in my view, and disserving the President if all the arguments were not laid out before him. And typically, you have people with very strong opinions on a variety of different subjects and the President solicits those opinions. He wants to hear them. That's what he's there for.

Senator DODD. So this is the pro and con, and the date of that is 1/10/94.

Mr. ICKES. It is.

Senator DODD. There's a second document that is entitled, and I think you started to read it, "Should an Independent Counsel Be Requested by the White House?"

Mr. ICKES. Yes.

Senator DODD. The date on that I have is 1/12/94. Is that your handwriting?

Mr. ICKES. That is my handwriting, Senator.

Senator DODD. Then I notice there's a letter dated January 12, 1994, signed by Mr. Bernard Nussbaum to the Attorney General.

Now the two previous memos deal with the discussion of whether or not an Independent Counsel ought to be requested. That's on the 10th of January and on the 12th of January.

Mr. ICKES. Yes.

Senator DODD. On the 12th of January, a letter goes from Mr. Nussbaum, as I read it, to the Attorney General, in fact, making that request, that an Independent or Special Counsel be appointed. Is that correct?

Mr. ICKES. That's correct. I don't happen to have that in my possession but that's what I read.

Senator DODD. Well, the reason I raise that again, those people may have just dropped in and heard this lengthy discussion about paragraph F in a memo that lays out all the various things that can happen or could happen or options and so forth, and then look at another memo and there's a tremendous preoccupation.

Within 48 hours of that, you have a letter going from the legal counsel to the President requesting the Special Counsel. Very little reference has been made of that by the Majority on this side, but it seems to me you need to look and say, yes, there was this debate going on, a discussion going on. But within 48 hours of that memo's discussion, the letter goes making the request.

I just want to make the point because sometimes you can just get lost in the minutia of all of this and you have to get to the bottom line of it. What happened? You had a lengthy memo, lengthy debate, all these notes and a lot of colorful language going back and forth. What happens? Forget being a lawyer. What does the average person say? What happens at the end of this? At the end of this, 48 hours later, a letter goes out saying, appoint the Special Counsel. That's what happens. So all of these discussions, all of this debate, all of this argument goes around for several days here and within 48 hours, that's what happens. Is that not the case?

Mr. ICKES. That is exactly the case and the President instructed Bernie Nussbaum ask the Attorney General to appoint a Special Counsel. As far as I knew, at that point, she was still reluctant to, but ultimately did so.

Senator DODD. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me turn to page S20579, about which there has been so much discussion, the notes involving the career Justice Department attorney who was appointed by the Attorney General to take over the investigation, Mr. Carver.

Now first of all, it seems to me in listening to the discussion about this, that in the beginning, senior people at the White House expressed concern over the notion that a Special Counsel should be appointed, given the fact that the allegations were unsubstantiated, the Clintons hadn't been charged with any wrong-doing, and the trigger mechanism, if this had been the statute, in effect, would not have been met. And other questions about the scope and history about Special Counsels having been appointed before, all seem to militate against the appointment of a Special Counsel.

Now much criticism has been leveled because there was concern about the unfettered scope of a Special Counsel and how much time a Special Counsel might take in conducting his or her investigation. And all of that has been laid at your doorstep at the Administration for having questioned in the first place the appointment of a Special Counsel.

In looking at this material, and particularly with respect to Mr. Carver's notes, I shudder to think about what the reaction might have been if you had embraced with open arms the appointment of a Special Counsel because then the argument would have been made, oh, Mr. Carver is too tough. Let's get the Attorney General to appoint somebody we like. The Attorney General can then control that person. We would be very happy with the appointment of a Special Counsel.

If the reverse position had been taken, is what I am saying, imagine the reaction politically now as you sit here testifying before this Committee because Mr. Carver had been doing a tough, independent job. Do you see that point?

Mr. ICKES. I understand the point.

Mr. BEN-VENISTE. So that here we are sitting, considering—isn't that a shame that the White House didn't say, oh, yes, let's get a Special Counsel. That would be terrific.

If the notes had reflected all of that and the observation about Mr. Carver's performance, then the argument would be made, but this is all a big cover-up, the appointment of Special Counsel.

This is don't throw me in the briar patch. We'd love a Special Counsel to get this tough Carver off our backs.

Let me now go to the question of Mr. Carver and the observation that was made, whether it was relayed to you or someone.

I have to tell you that, contrary to my friend, Mr. Chertoff, in doing this sort of trial work that involves contact with U.S. Attorneys and Assistant U.S. Attorneys and FBI agents for well over 25 years now, I have never had an instance where an Assistant U.S. Attorney has required FBI agents to participate in a telephone conversation, lawyer to lawyer.

So whoever made this observation, whether Carver was being overly cautious, or whether the agents were listening in without having been announced, or whether they had been listening in for a time and then their participation was announced as the conversation proceeded, or any other possible combination of those possibilities, it seems to me, yes, that's quite unusual for two lawyers talking on the phone to then have the Government lawyer put FBI agents on the phone with counsel, much less Counsel to the President of the United States.

First of all, on your observation, I find that, from my own experience, which is not insubstantial in this area, this was, indeed, an unusual event.

Second, the question raised in the colorful language in which it was reportedly raised by Mr. Gearan, simply indicates that the White House recognized that the Justice Department attorneys handling this matter were certainly independent of the White House, that they were unafraid to do things the way they wanted to, and that they were going to have a full and independent investigation conducted. All of which supports the notion that, in the first instance, the suggestion that these people were competent, capable, and fully prepared to conduct an independent investigation without the appointment of Special Counsel, was warranted.

Putting all these things together, as Senator Dodd has pointed out, it appears to me that the discussion of the pros and cons, the various possibilities here, were all essentially overwhelmed by the inevitable political reality, that under the circumstances, someone from outside the process was going to have to be appointed. The President recognized that, took the step offensively, as it was, came forward, and had his Counsel write a letter to a reluctant Attorney General requesting the appointment of an outside attorney to head up this investigation.

Mr. ICKES. That generally is a fair summary.

Mr. BEN-VENISTE. Senator Sarbanes.

Senator SARBANES. Were you aware at the time—I see my time is up. I'll wait until the next round.

The CHAIRMAN. Before I go to Mr. Chertoff, I'd like to make the observation that that was one of the most incomplete summaries of what took place relating to the public domain. It would lead one

to believe that there was not a huge clamor for the appointment of an Independent Counsel. It would totally eliminate the fact that both Senator Bradley and Senator Moynihan, had come out and said that an Independent Counsel should be selected.

It would have us believe if one were to look at the notes and read what took place privately, that we have no idea expressed in the strongest of terms by numerous people, that Mr. Gearan notes that Mrs. Clinton was adamantly opposed.

It had nothing to do with whether the Attorney General was for or against it. And yes, certainly the memoranda and documents Senator Dodd has pointed out are something that was not unordinary. That is something you would want to know the pros and cons about. I concede that. But it is an absolute contrivance to think that when someone expresses his opinion in such graphic and descriptive language, describing people as bad guys and saying what these people are really trying to do, that what that really means is they are doing a good job. That's just absolutely unreasonable. And for someone to suggest that that's what they meant, again, strains credibility, it is not worthy of belief, and casts doubts on the rest of that person's testimony. Now that's my observation.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I want to ask you with respect to this memo of March 1, that you passed up to the First Lady, which had attached to it this February 28th memo by Mr. Eggleston, why did you have Mr. Eggleston write the memo?

Mr. ICKES. Just bear with me a moment. You are not talking about my 1 March memo?

Mr. CHERTOFF. With the attached February 28th analysis of the Rose Law Firm issues. Why did you have Mr. Eggleston write the memo?

Mr. ICKES. As best I can recall, Mr. Chertoff, and I think I have testified to this earlier, but as best I can recall, there had been a report issued by the FDIC earlier in the month. Let me just check the date on this—yes. And there had also been a report, I think, issued by the RTC. Both of those reports, as I recall, dealt with the so-called conflict of interest between the Rose Firm, or the possible conflict of interest between the Rose Law Firm and Madison Guaranty. Don't hold me to this, but this is my best recollection.

Then, as I recall, there was an article or an editorial—I forget which—which I think appeared in The Wall Street Journal sometime later in the month that I read. And I think the President may have read it.

I certainly did not know all the ins and outs about it. The President may have asked me some questions about it. I don't recall. But based on those reports and that either editorial or newspaper article, I had asked Mr. Eggleston to write a memo.

Mr. CHERTOFF. What questions did the President ask you?

Mr. ICKES. I don't recall, Mr. Chertoff.

Mr. CHERTOFF. Well, did he ask you questions about whether he or Mrs. Clinton could be held liable?

Mr. ICKES. I don't recall.

Mr. CHERTOFF. Did he ask you questions about whether the Rose Law Firm could be held liable?

Mr. ICKES. I don't recall.

Mr. CHERTOFF. Now with respect to this description in Ms. Sherburne's notes and Ms. Chestin's notes of their conversation with your lawyer, where it's stated rather positively that your lawyer told the two White House Counsel that you had a conversation in which WJC asked lots of questions about RTC procedures and whether HRC and WJC were exposed or could be held liable.

Now is that the conversation or conversations that you are referring to when you say you may have had some conversation with the President concerning some Wall Street Journal article?

Mr. ICKES. You're on page 783, Mr. Chertoff?

Mr. CHERTOFF. Right.

Mr. ICKES. Well, again, I didn't write these notes. I don't know what they're in reference—

Mr. CHERTOFF. Does that refresh your memory?

Mr. ICKES. It doesn't refresh my memory because I wasn't involved in this meeting. I didn't take these notes.

Mr. CHERTOFF. Mr. Ickes, you were actually supervising Ms. Sherburne, am I correct, at the time in July 1994?

Mr. ICKES. Well, actually, Lloyd Cutler, I think at this time, was supervising Ms. Sherburne, although from the Chief of Staff's office, I was the point person.

Mr. CHERTOFF. All right. And you didn't come personally to be interviewed on this subject? You sent your lawyer instead to convey the facts?

Mr. ICKES. I wasn't interviewed by whom?

Mr. CHERTOFF. In other words, were you interviewed personally by Ms. Sherburne and Ms. Chestin?

Mr. ICKES. As I recall, I was because I think that Mr. Cutler was conducting an inquiry within the White House as to the facts and circumstances surrounding especially White House-Treasury contacts, as they were known.

Mr. CHERTOFF. Well, how is it that it was your lawyer who was giving information concerning this meeting and this memorandum, rather than you personally?

Mr. ICKES. How was it?

Mr. CHERTOFF. Yes. How did it turn out to be the case that rather than coming to you and asking you these questions, Ms. Sherburne and Ms. Chestin met with your lawyer instead?

Mr. ICKES. You'll have to ask them.

Mr. CHERTOFF. You didn't have anything to do with that?

Mr. ICKES. I don't recall having anything to do with it.

Mr. CHERTOFF. Were you available to Ms. Sherburne and Ms. Chestin to answer questions? I'm just wondering. See, what's striking is this, Mr. Ickes. Everybody else who apparently was interviewed that I'm aware of that we received notes or documents or material from the White House Counsel's Office, when we looked at this question last year, they went around and they interviewed all the other principals personally, directly.

This is the first time I can see a situation where some of the facts that we're getting in their notes, a lawyer is interposed between them. And I'm having difficulty understanding why it is that the White House Counsel's Office would settle to get the information through the lawyer, which now gives you the ability to argue

to us that somehow, you're not to be held responsible because you weren't there.

Do you follow what I'm saying? I'm wondering whether that's an unusual set-up for conducting an investigation, to give someone the ability to have a conduit so that they can step away if they have to or distance themselves. Do you know of anybody else who had that arrangement?

Mr. ICKES. Wait a minute. You've asked a lot of questions here. Do you want to start them one by one?

Mr. CHERTOFF. How is it that you wound up having your lawyer convey this information rather than you, personally?

Mr. ICKES. I didn't have my lawyer convey it. And I was interviewed personally by Ms. Sherburne and Ms. Chestin.

Mr. CHERTOFF. Did they ask you questions about this?

Mr. ICKES. I don't recall.

Mr. CHERTOFF. Do we have those notes, do you know? I'm going to ask Ms. Sherburne, do we have those notes?

Ms. SHERBURNE. We reviewed those notes, Mike, in the fall.

Mr. CHERTOFF. Well, I don't want to put you—

Ms. SHERBURNE. Those are notes that we talked about. The passages that you were interested in were called after your own review of all the notes, including the notes of our interview with Mr. Ickes, you identified the passages of our notes with Ms. Sabrin. We interviewed Ms. Sabrin because at the time Mr. Ickes was unavailable and we were proceeding with our inquiry at that time. You've only identified Ms. Sabrin—

Mr. CHERTOFF. OK. Fine. So now, why were you unavailable, Mr. Ickes? What was the source of the unavailability at this time? See, my question—

Mr. ICKES. Do you want me to answer the question or are you going to go on?

Mr. CHERTOFF. In what way were you unavailable during July and August of 1994, to be asked questions directly?

Mr. ICKES. Mr. Chertoff, I don't know what day it was. I may have been out of town. I travel with the President a lot. They may have decided that—I don't know what the facts and circumstances are. You're asking about something I have no idea about. All I do know is the following—that I distinctly recall being interviewed by Ms. Sherburne and Ms. Chestin.

Mr. CHERTOFF. But these questions were asked not in that interview, but in a subsequent occasion to your lawyer.

Mr. ICKES. I don't know whether it was prior or subsequent. All I know is that they were asked of my lawyer.

Mr. CHERTOFF. And you have no reason, by the way, to believe that your lawyer would have been attempting to mislead or would have been inaccurate in any way in conveying the information that she was conveying; right? So far as you know.

Mr. ICKES. I don't know what information she conveyed. Somebody else took these notes. I wasn't present, and I don't know the context.

Mr. CHERTOFF. Now did you become aware—I take it that you familiarized—

The CHAIRMAN. At this point in time, because I have difficulty in following this, Ms. Sherburne, we will send you a letter. I am

not suggesting that you or the White House in connection with this matter, have improperly withheld notes. As you indicated, Counsel saw them, did not make a request. I'm going to make a specific request for those notes, the interview that you conducted with Mr. Ickes. So would you make those available to us, please?

Ms. SHERBURNE. Senator, I'd be happy to make them available. The CHAIRMAN. Thank you.

Ms. SHERBURNE. I think the reason that Mr. Chertoff didn't request them is because we didn't question Mr. Ickes on this subject in that interview. We frankly didn't see its relevance or meaning to the inquiry, and we didn't pursue it.

Mr. CHERTOFF. Well, since it came up later and it wasn't done directly, I think it's interesting that it was done in a way that apparently allows Mr. Ickes now to distance himself. But I don't want to stick on this point.

Ms. SHERBURNE. The interview with Ms. Sabrin occurred first. Mr. Ickes' interview was following that.

Mr. CHERTOFF. Well, I don't want to start your examination now, Ms. Sherburne.

Senator SARBANES. Ms. Sherburne, what was the order of those interviews, again?

Ms. SHERBURNE. The first interview was with Ms. Sabrin.

Senator SARBANES. All right.

Ms. SHERBURNE. If you'll remember, in July 1994, we had a very compressed time period in which to conduct these interviews. So we were trying to schedule them. Mr. Ickes' schedule was not—it was difficult coordinating his schedule with our interview schedule. And so, in order to get the information we needed, we spoke to his lawyer. Then later, when he became available, we interviewed—

Senator SARBANES. And you interviewed him directly, though.

Ms. SHERBURNE. That is correct.

Mr. CHERTOFF. Ms. Sherburne, I take it you had no reason to believe that what Ms. Sabrin was telling you was inaccurate. Right?

Ms. SHERBURNE. We were asking Ms. Sabrin questions and I had reason to believe that she was reviewing information she had collected from a variety of sources. I don't know what her source of information was for this sort of thing.

Mr. CHERTOFF. Well, I don't want to—

Mr. BENNETT. Mr. Chairman, since we've been in this—

The CHAIRMAN. Yes, counsel? Right.

Mr. BENNETT. Could I just take 30 seconds?

The CHAIRMAN. Certainly.

Mr. BENNETT. I appreciate it, Mr. Chairman.

The CHAIRMAN. Why don't you sit at—

Senator DODD. Use the microphone.

Mr. BENNETT. I do appreciate it. But I do think that it's of interest to the Committee to clarify.

The CHAIRMAN. Sure.

Mr. BENNETT. First of all, Ms. Sabrin was never interviewed at all. It was simply a conversation that White House Counsel talked to Ms. Sabrin of my office. I should state for the record that we never authorized Ms. Sherburne or anyone else in the White House and, frankly, we're quite surprised that conversations between lawyers would be provided. But it has been provided. I only say that

because I think the record should be complete. But there was no interview of us and there was no effort on our part to insulate Mr. Ickes in any way. He's always been available and has fully answered the questions to the best of his ability.

Thank you.

Mr. CHERTOFF. Well, I will tell you, because this issue is going to come up later, I guess we will have to try to track down what appear to be very clear recollections that are being conveyed at a point in time in one location—

The CHAIRMAN. Please sit down, Mr. Ickes.

Mr. CHERTOFF. —whereas, in another location, namely, in a Senate deposition, we're getting a much different degree of recollection. But I don't want to spend the time quarreling about it. We can address that at another point.

I want to ask you, Mr. Ickes, whether in January and February of 1994, you became aware from learning the facts as they pertained either to the Rose Law Firm conflict of interest issue or to any other aspect of Madison, that a man by the name of Seth Ward was one of the individuals whose name came up in this Madison Rose Law Firm set of issues?

Mr. ICKES. During what period of time?

Mr. CHERTOFF. January and February of 1994?

Mr. ICKES. I can't say as a fact. I assume so. It's a name that's certainly familiar to me and it may well have come up during that period of time.

Mr. CHERTOFF. He, in fact, had been your client when you were in private practice. Correct?

Mr. ICKES. In what respect?

Mr. CHERTOFF. Well, was there a company named POM, that you did legal work for when you were in private practice?

Mr. ICKES. I did. For a very short period of time, I did represent POM.

Mr. CHERTOFF. Did he have any kind of relationship with POM?

Mr. ICKES. I know what I read in the papers, that he did apparently have some relationship with POM. I do not think at the time, I'm not positive of this—this was a long time ago, so you're taxing a frail memory—that he—POM was referred to me by Mrs. Clinton. It is or was at that time, in the mid-1980's, a maker of parking meters, I think one of the largest in the country.

Mrs. Clinton asked me to represent them in connection with some work in New York. It was a very, very short representation in terms of time and modest beyond belief in terms of fees. I am not at all sure that I knew at that time—I'm not saying I didn't—but I'm not at all sure that I knew at that time that Seth Ward was connected with it.

Mr. CHERTOFF. The issue of POM, didn't it in fact come up in the whole set of questions raised about whether there was a conflict of interest with the Rose Law Firm?

Mr. ICKES. It may have. I don't recall, but it may well have.

Mr. CHERTOFF. Was there a point where you yourself wondered whether you were the appropriate person to be involved in dealing with this issue of Rose Law Firm conflicts or Whitewater, when you became aware of the fact that POM and Mrs. Clinton and the

Rose Law Firm's representation of POM, had in fact become part of what was being looked at by the RTC and FDIC?

Mr. ICKES. It may well have been. As I sit here today, I have no recollection of that, Mr. Chertoff. But I'm not saying that it didn't come up.

Mr. CHERTOFF. Well, when was the period of time that you represented POM?

Mr. ICKES. As I recall, it was in the mid-1980's. I'm not positive of that, but I think it was in the mid-1980's.

Mr. CHERTOFF. And that was referred to you by Mrs. Clinton?

Mr. ICKES. It was referred to me by Mrs. Clinton, or let me try to be more precise. It was referred to me either by Mrs. Clinton or by somebody in her law firm who used her name. I don't recall exactly which.

Mr. CHERTOFF. Now did you have discussion with the First Lady concerning the RTC or FDIC investigations which you testified earlier were the background against which you had Mr. Eggleston prepare this February 28th memo?

Mr. ICKES. Did I discuss the investigations?

Mr. CHERTOFF. Yes.

Mr. ICKES. Or the FDIC and the RTC investigations?

Mr. CHERTOFF. Did you discuss the reports with her? The reports were transmitted up the line attached to your transmittal letter and Mr. Eggleston's memo.

Mr. ICKES. Right.

Mr. CHERTOFF. In fact, the very first paragraph of your March 1st transmittal memo talks about the attachment of the FDIC report and the RTC report. Did you discuss these reports with Mrs. Clinton?

Mr. ICKES. I don't recall discussing. I may well have, but I don't recall discussing the reports with her.

Mr. CHERTOFF. Did you review the reports in order to be prepared to discuss it with her?

Mr. ICKES. I think I reviewed the reports. I do not recall reviewing them in order to have a conversation with her about them. I may well have had a conversation. I don't recall having one, however.

Mr. CHERTOFF. Did you review them in order to be prepared to have a conversation with her?

Mr. ICKES. No. I think I've just said that I did not.

Mr. CHERTOFF. I want to turn your attention now to the Gearan notes. Before I move into this section, why don't I wait until I get a fresh 10 minutes.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Carol.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman.

I would like to ask a question. And I don't know if it's appropriate to ask the question of the witness or of the Chair. But when I was home this last weekend, one of the things that people would ask me most about is how much is this costing the taxpayers and how much money is involved in this whole effort? And we know from just the kind of compilation of materials by this Committee,

we've already spent of official Government money about \$30 million on these hearings.

The CHAIRMAN. No, not on these hearings.

Senator MOSELEY-BRAUN. I'm sorry. On this issue, the total. Independent Counsel, \$23 million—

The CHAIRMAN. Yes. But with respect to the Committee, our authorization, and we have not exceeded that, is about \$900,000 that we have spent to date. Our total authorization—

Senator MOSELEY-BRAUN. \$1.3 million, \$1,350,000 for the Senate?

The CHAIRMAN. No. I think it was \$950,000.

Senator SARBANES. We spent \$400,000 in the previous Congress.

Senator MOSELEY-BRAUN. Right.

Senator SARBANES. Then another \$950,000 in this Congress.

Senator MOSELEY-BRAUN. \$1.3 million.

The CHAIRMAN. \$1.3 million.

Senator MOSELEY-BRAUN. Then the Pillsbury Report was about \$3.6 million.

The CHAIRMAN. Well, that was not this Committee.

Senator MOSELEY-BRAUN. I understand.

The CHAIRMAN. You have to be careful because—

Senator MOSELEY-BRAUN. I understand, and I am going somewhere else.

The CHAIRMAN. Certainly.

Senator MOSELEY-BRAUN. And \$24 million for the Independent Counsel. But the thing that really got me, Mr. Chairman, and I have a specific question to ask about this, this fundraising letter from Citizens United is a fundraising letter from the people that put out the Willie Horton campaigns, which is bad enough. But what really distresses me, Mr. Chairman, is that it refers to a member of the Senate staff working on this Committee, as a, "top investigator," for this fundraising group.

It say, "our top investigator is on the inside working on this Committee." Then it goes on—wait, let me find that part—"our Citizens United investigators," again referring to investigators, "in Washington have run out of funds and must pay their expenses. So if there's any way you can please send some money. A major donation of \$100, \$250, \$500, or \$1,000 would be a blow to the White House," et cetera.

Now, my question is do we have members working for this Committee that are getting paid or somehow being supported by this fundraising group?

The CHAIRMAN. The first I heard of this was earlier today, even of this letter. But I do believe that my colleague is correct in raising the question whether any Members of this Committee or any who have access and who are working on behalf of Senators to the Committee, have any outside employment with this group or any other groups. And I will ascertain whether that is the case. I do not believe it's the case, but I will look into it.

Senator MOSELEY-BRAUN. Well, I'd like—

The CHAIRMAN. No, I'll ask.

Senator MOSELEY-BRAUN. I'd like the letter to go into the record, Mr. Chairman, or the fundraising letter, because it's 4 pages. But I call your attention particularly on the first page, very clear—our

top investigator is on the inside directing the probe. Now that's very serious business, Mr. Chairman. I have to believe that if not only taxpayer dollars are going for this, but we have outside groups out fundraising based on having people on the inside of this Committee involved with this, we have another set of major problems that I think warrant your looking into.

So I would very much appreciate——

The CHAIRMAN. Senator, I have just made inquiry. But I will get it in writing so that, for the record, we can indicate what the employment status is of the individual raised. But I've been informed by a staffer—I just raised the question—that the individual mentioned does not and is not employed and receives no compensation from this group.

Senator MOSELEY-BRAUN. I would very much like you to look into that, if you would.

The CHAIRMAN. Yes, certainly.

Senator MOSELEY-BRAUN. I look forward to your response. I would like this fundraising business to go into the mail. It's really scurrilous, in my opinion. But the idea——

The CHAIRMAN. Well, if you notice, and I mentioned before that they attack just about everything that moves in order to raise funds. That's not unusual.

Senator MOSELEY-BRAUN. Yes, I understand.

The CHAIRMAN. The Chairman himself also has been attacked.

Senator MOSELEY-BRAUN. The real issue of concern is whether or not this fundraising group has somebody, "on the inside directing the probe."

The CHAIRMAN. Certainly.

Senator MOSELEY-BRAUN. And so if you would look into that, I would appreciate it. I'll yield the rest of my time back to Senator Sarbanes or to Mr. Ben-Veniste.

Senator SARBANES. Mr. Chairman, in the course of ascertaining the employment status, I think we also need to ascertain whether there's any relationship there that would enable this group to make this assertion in this fundraising letter on the basis of some connection with a staff member of the Committee.

The CHAIRMAN. Well, Senator, on its face——

Senator SARBANES. No, let me finish, Mr. Chairman.

The CHAIRMAN. Certainly.

Senator SARBANES. The treatment of you in the fundraising letter is 180-degrees different than the treatment of the staff member. They're focusing on you for people to direct these petitions to you and also, at the same time, they tell them, don't just do the petition. Send us money. So they have this set-up here where they sign a petition that they send in to them, which is then, I think, to be transmitted to you, and at the same time, they're to make a contribution. But the use of the staff person is asserting that they have an inside into the investigation that's taking place here.

Senator MOSELEY-BRAUN. Directing the investigation.

Senator SARBANES. Pardon?

Senator MOSELEY-BRAUN. Directing the investigation.

The CHAIRMAN. Well, we know that's not true. I mean, that's just not true.

Senator SARBANES. But that's the assertion, and they are using that, obviously, as a basis for their fundraising. Now they may be completely misstating things, but I think it's important to look into them in order to ascertain what the situation is. It's made more complicated because it is my understanding that Mr. Bossie did have a relationship with this organization over quite a period of time and was a very important and essential part of its functioning. So I think there is something that needs to be examined here.

Senator MOSELEY-BRAUN. Again, I yield the rest of my time to Mr. Ben-Veniste.

Thank you.

The CHAIRMAN. First, I make the observation again that I have ascertained that the staffer no longer has a relationship, nor did he ever have a relationship once he terminated with that group.

Second, as it relates to the claims made by the group, there are groups that make claims every day. I don't think the Committee can or should be in the position of attempting to ascertain the reliability of the claims that various groups make, or the accuracy of their statements.

Certainly, as it relates to whether somebody is employed, that is absolutely something that we will do. I've learned again that that person—and I've learned it verbally—has no connection with this particular group at this time. But I will get that in writing with definiteness and make it part of the record and submit it—

Senator DODD. Mr. Chairman.

Senator SARBANES. Mr. Chairman.

Senator DODD. If I might inquire as well on this point. We've had a couple of occasions when—because we have a lot of sensitive material that Counsel has to deal with. It's a question, too, whether or not anybody has access to that information and then shares that information.

I think that, because of the prior relationship and given the very public nature of this fundraising request and the particular note of the relationship, there have been instances where we have seen leaks and so forth.

The Chairman has been very firm on the issue, and I commend him for it, on warning people about what happens if they're caught releasing or giving out information. And I realize that the most important one would be whether or not you have a financial relationship. But I would respectfully inquire as to whether or not any information gets shared.

Given the previous history here, that becomes a means by which information is then pumped into a letter and becomes part of the fundraising technique as well.

The CHAIRMAN. Well, let me say that I will make it a point to ascertain whether information, nonpublic information, has been shared and we will make it a point, and I think we've said this to all of our staffers, that we expect nonpublic information not to be shared with anyone.

Senator DODD. You've been very good on that. Appreciate it.

The CHAIRMAN. We have been pretty fortunate. There have been some unfortunate slips. I think sometimes people try to curry favor with one another. But I think, basically, the Committee staff has done a good job on both sides.

I will now recognize Mr. Chertoff.

Senator MOSELEY-BRAUN. Mr. Chairman, no, no. Please, if I may, before you go to Mr. Chertoff.

The CHAIRMAN. Certainly.

Senator MOSELEY-BRAUN. I understand this is the Senate and we say nice things and call each other, my friend, as we say nasty things about each other sometimes. But the fact of the matter is that this is a very serious statement. It's a very serious statement that goes to the heart of this body.

I am very concerned, not only about the remuneration, which is more than just a salary, but this statement is that this group's top investigator is on the inside. Now, I think we have to look at the relationship issue here as well.

The CHAIRMAN. I said we would.

Senator MOSELEY-BRAUN. We know we have had problems with leaks and the like. But leaks—obviously, if an outside group's top investigator is on the inside, it kind of goes without saying that that's probably where some of the leaks come from. But the point I think is that it undermines all the other good work of the other good staff, people who are trying to do their job and trying to be faithful to their responsibilities to the Senate and to this Committee, if we have someone who can be, even in any stretch of the imagination, described by an inflammatory group or an inflammatory statement by a group like this, as our top investigator, on the inside.

That's very troubling to me. And I would very much like you to, when you ask the question, you probe as much as you can into the nature of the relationship, if the relationship has terminated, when it terminated, what was the relationship before, whether or not the Members of this Committee knew about that relationship before this individual started working on the inside. I think those are very pertinent questions to an issue that we have spent this much time and money getting at.

The CHAIRMAN. Let me say that I will take the Senator's questions that you want answered and they will be asked exactly in the manner that you have just enunciated. So I'm not going to attempt to repeat verbatim. But I'm going to take that from the record and this way we'll have that.

I will note for the record, though, that the individual in question, I have been informed, has terminated his relationship prior to coming to work for one of the Senators on this Committee, does not work, per se, for the Special Committee, but works for one of the Senators. He's on his personal staff. I think that's an important point to make. But I also believe that the questions put forth by the Senator are important to ascertain. We will ascertain them.

Senator MOSELEY-BRAUN. But, Mr. Chairman, if he is on the Federal payroll, he can't be described as a top investigator for this group that's asking people to send in \$1,000.

The CHAIRMAN. You know, Senator, now we're trying to evaluate the validity of their remarks. I don't believe they're accurate.

Senator MOSELEY-BRAUN. Well, we can get the validity from the statement that you're going to get.

The CHAIRMAN. I'm going to do that.

Senator MOSELEY-BRAUN. And I believe you are. Thank you.

The CHAIRMAN. I'm going to do that. I'm going to ask exactly the questions that you put forth in terms of what was the relationship, has it been terminated, when was it terminated, and we'll get an answer for the Committee. The Committee is entitled to that.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Ickes, I want to ask you, before we resume with what we have been talking about, since we have you here, your name crops up as someone who may have been in the residence during the period of the latter part of July 1995, into the middle part of August, 1995. So I am going to ask you a question that we have asked other people. Have you ever been in a room which is described as the Book Room on the third floor of the residence? Namely, a location in which there are books, gifts, and other things of that sort? And I will confine myself to the time period to include July and August, 1995.

Mr. ICKES. The answer is no.

Mr. CHERTOFF. Have you, before January 4, 1996, seen these billing records of the Rose Law Firm? And I'll send them down to you to look at. For the record, these are the billing records which were furnished to the Committee in early January of this year.

Mr. ICKES. Mr. Chertoff, I don't recall ever seeing these before. Unless one was printed in a newspaper—

Mr. CHERTOFF. But putting aside the newspapers.

Mr. ICKES. Yes. I don't recall ever seeing those before.

Mr. CHERTOFF. Do you have any knowledge about how billing records came to be, putting aside what you have read in the papers or heard on the media, do you have any knowledge of how the billing records came to be in the Book Room in the summer of 1995?

Mr. ICKES. I have no knowledge.

Mr. CHERTOFF. Now let me direct your attention, Mr. Ickes, to the notes that Mr. Gearan made, in particular, of a meeting on January 7, 1994, which are contained, in particular, on pages 20576 and 20577.

Mr. ICKES. OK. I have those, Mr. Chertoff.

Mr. CHERTOFF. Now to just set the context, on 20576, attributed to you is the statement, "Beverly Bassett is so f---ing important, if we f--- this up, we're done." Do you dispute that you made that statement?

Mr. ICKES. I don't recall making the statement. On the other hand, this is what Mr. Gearan's notes show.

Mr. CHERTOFF. Do you agree that you believed at the time in substance that "Beverly Bassett was f---ing important, if we f--- this up, we're done"? Does that reflect the sentiment or belief you had at that period of time when you were having discussions with the Whitewater Response Team?

Mr. ICKES. As I sit here today, Mr. Chertoff, I don't recall having those sentiments. I do concede or I agree that she was important because we were being asked a lot of questions by reporters about her. There were editorials about her. So the fact is that since she was being talked about in the press, we were being peppered by the press with questions, she was important.

Mr. CHERTOFF. Now then, on the next page, still attributed to you—and the way Mr. Gearan organizes his notes, there's an attri-

bution and a dash and then text. On this last page, there's an attribution to you and a dash and then the next attribution is at the bottom, Quinn dash arm's length. Did Mr. Quinn attend these meetings of the Whitewater Response Team?

Mr. ICKES. Not that I recall. I'm not saying that he didn't, but I literally have no recollection of his attending those.

Mr. CHERTOFF. Focusing on what's attributed to you, it indicates, we can't send PB, BL, MW. It will come out. I take it your position at the meetings was that you didn't want to have someone from the White House or someone closely associated with the White House going down to talk to Ms. Bassett because it would come out and be embarrassing in some way?

Mr. ICKES. As I've testified before, Mr. Chertoff, earlier today, my concern was that there was nothing illegal with anyone contacting Ms. Bassett, but if somebody from the White House did contact her, it could be used politically or from a public relations point of view in a very adverse way.

Mr. CHERTOFF. How would it be adverse?

Mr. ICKES. What?

Mr. CHERTOFF. How would it be adverse?

Mr. ICKES. Because people would say—my concern was that some people could say that these contacts for the purpose of trying to influence her. Influence her in what way? Who knows? I mean, what she had said was she had told the truth, as far as we knew, that she had done nothing wrong, notwithstanding the allegations that were being raised in editorials in December 1993 and early 1994. But it was my view, better not to have somebody from the White House go and contact her.

Mr. CHERTOFF. So your belief was that if someone from the White House were in touch with her or were known to be in touch with her, that could create an appearance that there was an effort to influence her. Is that your basic thrust?

Mr. ICKES. I was concerned that some people could raise that as an issue.

Mr. CHERTOFF. So your position, then, was no one acting on behalf of the White House ought to try to contact her.

Mr. ICKES. I thought it was the better part of discretion not to.

Mr. CHERTOFF. But then the conversation goes on to say, item by item, make sure her story is OK. What does that mean? What does that refer to?

Mr. ICKES. Well, again, I didn't write those words, Mr. Chertoff. As I've testified before today, we wanted to make, we were being asked a lot of questions about her and her decisions or rulings, whatever one wants to call them.

Major newspapers were raising serious questions as to whether there had been arm's-length treatment by her with respect to Madison Guaranty, especially since Mrs. Clinton's law firm was then representing Madison Guaranty. We wanted to make sure that we knew what the facts were to the extent possible. I think that Mr. Siewert's memorandum is evidence of that.

Mr. CHERTOFF. Then there's a notation of make sure her story's OK. There's a list of three possible people—Tisdale in Lindsey firm, Skip, and PB friend New York lawyer. Is it your testimony that

those were people who were going to make sure her story was legally correct?

Mr. ICKES. No, that's not my testimony. In fact, I've testified just to the opposite earlier today.

Mr. CHERTOFF. What was their job?

Mr. ICKES. What?

Mr. CHERTOFF. What was their function going to be?

Mr. ICKES. I don't know what their function was going to be. As I testified earlier today, Mr. Chertoff, I don't know whether I raised those names or whether other people raised those names. There were a number of people in these meetings and I suspect that other—first of all, I didn't write this. Second of all, other people may well have raised these as names as people who might possibly contact her.

Mr. CHERTOFF. For what reason?

Mr. ICKES. What?

Mr. CHERTOFF. For what reason?

Mr. ICKES. We wanted to find out as much information as possible, Mr. Chertoff. There was nothing illegal in contacting her and we wanted to find out as much information as possible about the facts and circumstances. The fact that the Siewert memorandum is evidence of that—

Mr. CHERTOFF. Wait a minute, Mr. Ickes. You're straying outside the bounds of the question. The question is really very simple. Your testimony is you take the position no one ought to contact her because it could create an appearance problem with some people. But then in the same conversation, the issue arises of alternative people who might contact her. And the only difference seems to be whether they're people who are obviously affiliated with the White House or whether they're people whose affiliation with the White House is remote and might not be detected.

Mr. ICKES. Mr. Chertoff, I don't know who raised those names. I didn't take those notes. It's not at all clear to me that I raised those names. Others may have raised them.

Mr. CHERTOFF. Do you think you didn't hear this part of the conversation?

Mr. ICKES. What?

Mr. CHERTOFF. Do you think you didn't hear this part of the conversation?

Mr. ICKES. I don't know whether I heard this part of the conversation or not. All I'm telling you is that I didn't take those notes. I don't know whether I raised those names or not. There were a number of other people in the room.

Mr. CHERTOFF. Did you chime in when someone said, well, let's send somebody from Arkansas to talk to her?

Mr. ICKES. I think my general position was better not to have people contact Ms. Bassett.

Mr. CHERTOFF. In fact, Mr. Rutherford did contact Ms. Bassett; is that right?

Mr. ICKES. According to this newspaper article, apparently, he did.

Mr. CHERTOFF. And your testimony—

Mr. ICKES. But I point out that they live in the same town, they live in the same State, and I suspect that they've known each other for many, many, many, many years.

Mr. CHERTOFF. Your testimony is that you were unaware of that?

Mr. ICKES. To the best of my recollection, I will testify to the best of my recollection as I sit here today. I was unaware of it.

Mr. CHERTOFF. Mr. Tisdale contacted her and you were unaware of that, too?

Mr. ICKES. To the best of my recollection as I sit here today.

Mr. CHERTOFF. PB is that Paul Begala, or in this context, is it Paul Berry?

Mr. ICKES. Paul, who?

Mr. CHERTOFF. Berry—B-e-r-r-y.

Mr. ICKES. I don't recognize the latter name. It could be either one. I don't recognize Paul Berry's name.

Mr. CHERTOFF. Berry—B-e-r-r-y.

Mr. ICKES. B-e-r-r-y?

Mr. CHERTOFF. Yes.

Mr. ICKES. I don't recognize that name. But it could be Paul Begala.

Mr. CHERTOFF. You don't recognize Paul Berry to be someone who has known the President for a long time from back in Arkansas?

Mr. ICKES. I do not recognize the name, Mr. Chertoff.

Mr. CHERTOFF. Were you present in the White House when Ms. Bassett was a visitor there in January 1994, would have been invited to attend a movie screening?

Mr. ICKES. Was I present in the White House?

Mr. CHERTOFF. Yes.

Mr. ICKES. I was employed by the White House.

Mr. CHERTOFF. Were you present with her or were you aware of the fact that she was at the White House in January 1994, attending a movie screening with the President?

Mr. ICKES. At the time?

Mr. CHERTOFF. Yes, at the time.

Mr. ICKES. Not that I recall. I do not think that I was aware that she was here.

Mr. CHERTOFF. Did you become aware of it afterwards?

Mr. ICKES. I don't recall becoming aware. I may well have.

Mr. CHERTOFF. The next page of the notes is a conversation the next day. And you report—

Mr. ICKES. You're on what page? I'm sorry.

Mr. CHERTOFF. I'm on 20578.

Mr. ICKES. OK.

The CHAIRMAN. "7 January, Mack's office, Whitewater, attributed to you. To try to reopen it is impossible. POTUS can't. Staff can't. Christopher to talk to FLOTUS. Bob Barnett." POTUS is the President of the United States, in the typical vernacular of the White House?

Mr. ICKES. Yes. Yes, that's the vernacular.

Mr. CHERTOFF. FLOTUS is the First Lady of the United States?

Mr. ICKES. Yes, that's correct.

Mr. CHERTOFF. You reported to the people in the Whitewater Response Team on this date that, at least as of this point in time, it

was impossible to reopen the question of an Independent Counsel with the First Lady. Is that correct?

Mr. ICKES. I wouldn't say I reported that. Again, these are not my notes. These are not in quotes. These are characterizations and notes taken by Mr. Gearan. But there is no question that at that time the First Lady had extraordinarily grave reservations about the appointment of a Special Counsel for the reasons that I've already articulated. And I think it is fair to say that the President shared to some extent in that view.

Mr. CHERTOFF. The note indicates, though, that the President himself couldn't reopen the issue with the First Lady. Is that true?

Mr. ICKES. Well, again, I don't recall saying that. That's Mr. Gearan's notes.

Mr. CHERTOFF. Is it true? Is that in fact the case?

Mr. ICKES. Is what true?

Mr. CHERTOFF. That the President, at least as of January 7th, was himself unable to reopen this question of the Independent Counsel, the Special Counsel, with the First Lady?

Mr. ICKES. First of all, I don't know, number one.

Mr. CHERTOFF. You don't know.

Mr. ICKES. Number two is that he is the President and he was the one who ultimately instructed his Counsel, Bernard Nussbaum, to ask the Attorney General to appoint a Special Counsel.

Mr. CHERTOFF. But my question was, as of this point in time, several days before that letter was written to the Attorney General, was the state of play such that the President himself was unable to reopen this question with the First Lady?

Mr. ICKES. Mr. Chertoff, I didn't write the notes. I don't know what the phrase, reopened it, means. He is the President of the United States. He made the decision to request Special Counsel and Special Counsel was, in fact, appointed.

Mr. CHERTOFF. Did Warren Christopher get asked to talk to the First Lady?

Mr. ICKES. I have no—I don't know whether he did or whether he didn't.

Mr. CHERTOFF. Was he asked to talk to the First Lady?

Mr. ICKES. I testified just a moment ago. I don't know whether he was or whether he wasn't.

Mr. CHERTOFF. So you didn't ask him.

Mr. ICKES. I have no recollection of asking the Secretary to talk to Mrs. Clinton.

Mr. CHERTOFF. Did someone say to you that they were going to ask Mr. Christopher to talk to the First Lady?

Mr. ICKES. They may well have. I don't recall.

Mr. CHERTOFF. Later, at the bottom of the notes, and this goes back to that discussion or series of questions we had earlier concerning the memo where one of the objections to a Special Counsel was the notion of such a person squeezing friends and associates of the President.

Mr. ICKES. OK. You're on what page? I'm sorry, Mr. Chertoff.

Mr. CHERTOFF. I'm still on page 20578.

Mr. ICKES. Seven, what?

Mr. CHERTOFF. Page 20578.

Mr. ICKES. 78. OK.

Mr. CHERTOFF. It's the same page we've been on.

Mr. ICKES. Bear with me, I'm getting there. Got it.

Mr. CHERTOFF. It's the same page we've been on for the last few minutes. You don't have to leave it yet. I want to remind you about the testimony we had a little earlier, which, one of the arguments against the Special Counsel was that that prosecutor might squeeze friends and associates of the President and might subject some of them to indictment. There's a notation at the bottom where Mr. Nussbaum talks about indictments will be Betsey Wright. Do you remember Mr. Nussbaum saying that?

Mr. ICKES. I don't remember Mr. Nussbaum saying it. All I know is what I read in Mr. Gearan's testimony about that.

Mr. CHERTOFF. So you have no independent memory about that?

Mr. ICKES. I have no independent memory.

Mr. CHERTOFF. Did you attend all the Whitewater Response Team meetings?

Mr. ICKES. To my knowledge, I did.

Mr. CHERTOFF. Again, just to make it clear, there were, at least during the first 2-week period, at least one, if not two, a day; is that right?

Mr. ICKES. That's correct.

Mr. CHERTOFF. At least, would you agree with me there would have been in the first half of January, about a dozen meetings?

Mr. ICKES. I don't want to put a number on it. There were a number of meetings.

Mr. CHERTOFF. One of the early meetings is the meeting in which Mr. Nussbaum described the difference between the good-hearted prosecutor and the good-hearted Nussbaum and the bad-hearted prosecutor. Do you remember that?

Mr. ICKES. I don't recall that. All I know about that is what I read in Mr. Gearan's testimony. Again, he took these notes.

I just want to point out to you, Mr. Chertoff, that this was not the only thing that I was doing. I had been brought down and asked to join the White House staff to manage the health care effort, which was a mammoth effort I knew was getting very much involved in that.

So this was not the only—I understand for the purposes of this Committee that you're focused very much entirely on this effort here, and I'm not criticizing you for that. But the fact of the matter was I usually get into the White House at 6:00 in the morning. I often do not leave until 9:00 or 10:00 at night.

This was not the only thing that I was involved in. It was a serious matter and I was paying a considerable amount of attention to it. But I had a lot of other things that I was paying attention to while I was at the White House at that time, including the upcoming general elections.

Mr. CHERTOFF. The upcoming general elections? You were paying attention to them in January 1994?

Mr. ICKES. Indeed.

Mr. CHERTOFF. For the upcoming general elections. So you were paying attention to that in January 1994?

Mr. ICKES. Indeed.

Mr. CHERTOFF. Mr. Ickes, there was a connection in your mind actually in January 1994, between the Whitewater matter and the health care initiative. Is that correct?

Mr. ICKES. There was a concern about the focus of the First Lady, yes. That was discussed.

Mr. CHERTOFF. Did Margaret Williams attend meetings of the Whitewater Response Team?

Mr. ICKES. I'm sorry. I didn't hear you.

Mr. CHERTOFF. Margaret Williams. Did she attend meetings?

Mr. ICKES. On occasion. I don't recall her as attending all of them, but she did attend some.

Mr. CHERTOFF. She was a regular member of the Whitewater Response Team group?

Mr. ICKES. I don't know what you mean by "regular." As I testified, to my best recollection, she did not attend all of them, but she attended some.

Mr. CHERTOFF. I want to go back, but I have run out of time. I'll go back to your deposition.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ickes, when did you come down and begin your responsibilities at the White House?

Mr. ICKES. As I recall, Senator, I came down on the first Monday in January. I think it was literally the first working day of the first week in January 1994.

Senator SARBANES. As soon as you arrived, this Whitewater issue and the question of appointing a Special Counsel was front and center in the press, was it not?

Mr. ICKES. It was. And I knew very little about it.

Senator SARBANES. The suggestion or the innuendo is, since this group was meeting every day, that somehow there's something wrong with that. But on January 3rd, there is an article in the press reporting on Senator Dole's appearance on NBC the day before, on Sunday, where he accused Reno of dragging her feet on appointment of an Independent Counsel, and said, "It is high time that she did what she knows she should do."

Dole—and this is the article—is angry at a lengthy probe of the Iran-Contra affair during the Reagan Administration, has led a GOP effort on Capitol Hill to block reinstatement of the post-Watergate law providing for court appointment of Independent Counsel to investigate wrongdoing by high-level Government officials. In fact, Senator Dole and others were quite outspoken in their opposition to the Independent Counsel. He was quoted as saying:

In far too many instances, the investigations conducted by Independent Counsels have turned out to be partisan political fishing expeditions, expeditions which have accomplished nothing more than wasting millions of tax dollars.

Another time, he said:

The statute placed no limits on the amount of time and money an Independent Counsel can spend on his target, nor does it monitor the motives behind the counsel's actions. It has allowed someone like Lawrence Walsh to go down every blind alley pursuing more conspiracy theories than Oliver Stone.

Now nevertheless, with these misgivings about the Independent Counsel that involved redoing the statute—and that was not then in place—Dole said yesterday:

Without the law, Reno could use her authority as Attorney General to appoint an outside counsel to handle the case, which is currently being investigated by career Government employees.

A similar proposal was made by Representative Leach. Justice Department spokesman Carl Stern said:

Anyone Reno appointed would be under her supervision and influence rather than serving independently by court appointments, as the law intended. Unlike Dole, Reno supports restoration of the Independent Counsel law, which was approved late last year by the Senate, and slated for consideration this year by the House.

This was on the agenda, in effect, when you arrived, was it not?

Mr. ICKES. Very much so, Senator; so much so that Mack McLarty asked me, barely after I had stepped off the plane into the White House, to devote a lot of attention to it.

Senator SARBANES. In fact, the attention was heightened on the 11th of January with a letter from Senator Dole and the Chairman and others to Attorney General Reno saying:

We regret that you have rejected Congressional requests to appoint a Special Counsel to examine the allegations of potential misconduct that have recently surfaced.

Then goes on to urge her to go ahead and appoint a Special Counsel, which was, of course, the very issue that was being discussed by your group over this period of time. Is that correct?

Mr. ICKES. Exactly. Senator, if one had a compilation of the editorial opinions at that time from across the country, there was a growing drumbeat from major newspapers, starting with The New York Times, The Washington Post, The Wall Street Journal, and papers further west, to have Special Counsel appointed.

Senator SARBANES. Now on the 12th of January, the Counsel to the President, Mr. Nussbaum, sent a letter to Janet Reno, and I quote it:

Dear Madam Attorney General:

The President has directed me to request you to appoint as Special Counsel a respected, impartial and qualified attorney who is not a Member of the Department of Justice or an employee of the Federal Government, to conduct an appropriate independent investigation of the Whitewater matter and report to the American people.

That was on January 12th. And as I understand it, Attorney General Reno, I think, on the 20th if I'm not mistaken, announced the appointment of a Special Counsel. Is that correct?

Mr. ICKES. That's my recollection. I think, Senator although I do not have that letter in front of me, that there was in no way any restrictions requested with respect to scope or anything else.

Senator SARBANES. That is a good point, because that was pursued earlier with a suggestion that there was an effort to perhaps intrude in upon the authorities of the Attorney General in this matter. This is the letter and it's very short, two-paragraphs. I read the first paragraph. The second paragraph says:

In view of the gravity of the President's responsibilities and the need for a prompt resolution, I respectfully request that this investigation be conducted as expeditiously as possible.

Very truly yours,

Bernard Nussbaum, Counsel to the President.

That's the extent of the letter that went to the Attorney General requesting the appointment of a Special Counsel.

Senator Dodd.

Senator DODD. I thank my colleague.

I guess I was struck—I had forgotten this. You said it was the first Monday in January you joined the White House in 1994?

Mr. ICKES. As I recall, Senator Dodd, it was not graven in my mind, but I think it was the first Monday of January 1994.

Senator DODD. So when we look at all these notes and memos now that we've gone over here ad nauseam here today of this 5th, 6th, 7th, 8th of January, you'd been at the White House all of a maximum of 7 days, maybe less.

Mr. ICKES. Not only that, I probably knew less about Whitewater than anyone around. I found it completely—unlike my wife, who followed it closely—I found it very, very confusing. And it took too much time to read all the accounts in the newspapers. So I literally had read one or two articles about it.

Senator DODD. Again, I think there's the assumption probably by an awful lot of people that you had been in the White House going back to the very first days of the Administration. So in fact, all of this swirling information around—you were hurled into this; so a lot of the names of the people they are talking about, the Carvers and so forth—I was wondering myself I guess, a while back, why you might not know these people. Now I know why you didn't know them. You hadn't really been here before.

Mr. ICKES. I'd come up with the President very early in the Administration, not in an official capacity, and then had gone back to New York. But this was literally the first week I was there. And again, I want to emphasize this was not the only thing that was under my jurisdiction. I had the political apparatus of the White House under my jurisdiction, and most importantly, or as importantly, the President's health care initiative, which was this very important issue that we were trying to move at that point.

Senator DODD. I appreciate that. We should maybe have made more of that. I guess the assumption is that everyone knew it. I guess they did, but they didn't relate it. So here we've had you now on the witness stand here for about 6 hours, going over basically events around those 2 or 3 days, and these notes. And we've gone back over and over and over and over again.

My response—and again, I appreciate what people think. But as I listen to all of this, the end of it, in the context of what these hearings are all about, my response to basically what I've heard is, "So what?" Because frankly, as the Senator from Maryland has pointed out, you got the request from the President on the 12th. You got the appointment on the 20th. And we've spent an awful lot of time here talking about memos back and forth, and discussions and dates that all amount to nothing, because in fact the request is made by the President and the Attorney General names Mr. Fiske. And Mr. Fiske is widely applauded by virtually everybody from both sides of the aisle in Congress, Republicans and Democrats alike.

Mr. ICKES. He received a lot of praise from both sides.

Senator DODD. So we've gone through all these excruciating details in these memos, and that's why I say, "So what?" at the end of this. I don't know what we've established here, except for the fact that at the end of the day, this President calls for the appointment of a Special Counsel and the Attorney General does it, all within hours almost, if you want to look at it in this context. All

this debate going on inside the White House with someone who'd been there for about 3 days.

Mr. ICKES. I don't disagree with you, although it's your prerogative to make those statements. I would point out it is somewhat interesting that this body, I think, has had 1 day of hearing on Medicare and some 50 days' hearing on this issue. But that obviously is a set of priorities.

Senator DODD. Some of us have made that point up here. I don't have any more questions for you, Mr. Ickes.

I've had the privilege of working with you on a number of issues over the last year or so. I wonder about people sitting out there watching, someone who comes to town in the first 3 or 4 days in Washington. And I wonder about people on our own staffs who write memos and notes, and future White Houses where people rely on people having candid discussions and sharing observations.

Boy, you watch this process unfold, you ought to shake your head. I don't know how many more people we're going to attract to come down to work in the government if we put people who are there in a wringer like this all the time. I don't think we serve ourselves well.

But nonetheless, that's this Senator's lone observation on all of this. I thank you for being here. I think you've done a good job. I think you've done a good job today as well, and I appreciate your presence here.

Mr. ICKES. Thank you.

Senator DODD. Mr. Chairman, I don't have any more questions.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me fill the record a little more completely on questions that were asked you about matters involving two subjects, the first of which being the question you were asked relating to page 578 of these notes regarding Betsey Wright, where you indicated you had no recollection of any mention being made of Ms. Wright.

We do have the benefit, however, of Mr. Gearan's testimony, which he gave at page 27 of these hearings on February 15th, where he said in response to this question:

Mr. CHERTOFF. Now this was Mr. Nussbaum discussing kind of the worst case scenario that might come out; right? Is that right, if there was an Independent Counsel?

Mr. GEARAN: No. Mr. Chertoff, I think I owe it to Betsey Wright and to the Members of this Committee to say that at no time was I present at any conversation where Mr. Nussbaum suggested that there is any basis for Ms. Wright to be charged with anything like this. He was using this as an extreme example of someone who would be shot by the unguided missile, if you will. That this would be an extreme example of an unwarranted prosecution.

The fact is that the pros and cons were being discussed candidly, as Senator Dodd said, without some view that Big Brother, as it were, would be peeking over your shoulder; and then, subjecting these candid conversations about the history of the Independent Counsel and what the powers were in that office under the Administrations of various people who held the position of Independent Counsel or Special Prosecutor and the like—that similarly, the issue about whether people would be squeezed, or whether some individual or another would be attacked by such a person was, if I understand the testimony, used in a very hypothetical way to illus-

trate some of the problems that had occurred in the past associated with various of the Independent Counsel.

Mr. ICKES. That certainly is my recollection.

Mr. BEN-VENISTE. Finally with respect to the question of Ms. Schaffer being invited to the White House in January, and having attended the screening of a film at the White House, we have the benefit of Ms. Schaffer's testimony, who was questioned at page 239 of the hearing transcript of January 25, 1996. And her testimony was, in substance—I believe you all can check on this—but my recollection of the substance of her testimony is that she spoke briefly with the President, that the President apologized that she had been put through all of the aggravation, as it were, of being pursued by the media by reason of her experience in the mid-1980's with Madison Bank; and that he apologized that he and she might have to go through that again. There's no suggestion that you were present, or had any conversation with Ms. Bassett at that time?

Mr. ICKES. I don't think I have ever met her. I don't recall ever having met her.

Mr. BEN-VENISTE. Nothing further, Mr. Chairman.

Mr. ICKES. Mr. Chairman, would you indulge me in a 10-minute break?

The CHAIRMAN. Yes, sure. We'll take a 10-minute break.

[Recess.]

The CHAIRMAN. Before I turn to Mr. Chertoff, I would like to read something into the record. Because more often than not, people ask me, "So what? What happens even if some of the things we're looking into may turn out to be the case?" And I'm not saying they will or they won't. But "What's the big deal?" I think that's been a question asked, and I think there's a very interesting observation—let me read it—entitled "Whitewater Paper Chase."

The excitement of Iowa and New Hampshire have diverted attention from the Senate Whitewater Committee and its investigation into Rose Law Firm's migrating files. Naturally, this pleases the White House and its allies, who hope to use the interregnum . . .

Hmm, I like that word—

. . . to let their "So what?" arguments take root. David Kendall, the Clintons' private attorney, says that the curious paper trail is just "one of the meaningless mysteries of Whitewater."

There are mysteries here, but they are not meaningless. That should be clear to anyone with the patience to walk through the known chronology.

I must admit here, there is a long chronology, and it's difficult to follow. But I think it is important, and certainly the obligation of this Committee, to do that. The article goes on to list a number of important occurrences and days starting in the mid-1980's, when Mrs. Clinton performed legal work for Madison Guaranty. I'll go to the second part of the editorial:

In August 1995, according to her Senate testimony, Carolyn Huber, a secretary, came across a stack of papers in a room near the living quarters. They reposed in her office until January 4th, when Ms. Huber realized that the papers might be copies of the long-sought billing records. She notified senior officials, whereupon the White House released the records to Mr. Starr and Congress.

Mr. Kendall has told the Committee that "we may never know" how those records found their way to the White House. He also faulted Ms. Huber's memory in an apparent attempt to broaden the timeframe in which she discovered the records, and thus the number of people who might have placed them in the Book Room.

The White House argues that the peregrinations of these papers add up to nothing. But notice where the facts point. Documents relating to Mrs. Clinton's legal

work for Madison were vetted for political sensitivity by two people who later became senior Government officials, Mr. Hubbell and Mr. Foster. They were given to Mr. Foster and wound up in the White House living quarters. Another set of documents were stored in the basement of the Justice Department's third-ranking official, Mr. Hubbell, who was looking out for the Clintons' political interests, not his law enforcement duties. When the records were subpoenaed, numerous White House officials had to know of their existence, and possibly of their whereabouts. Yet the subpoenas were ignored.

The White House argues that these files will show conduct that was innocent and ethical, that they contain no evidence of misdeeds, as some Republicans suspect the Clintons of: Mixing personal and campaign funds, bending State regulatory policy to help their partners and contributors, and underpaying taxes on all the money invested on their behalf in Whitewater.

Perhaps the files would show that there was no cover-up associated with moving and storing these files. But inanimate objects do not move themselves. So it's pointless to ask Senators and the Independent Prosecutor to fold their inquiry on the basis of the facts that have emerged so far. To do so would be a dereliction of their duties.

That was an editorial from The New York Times just this past week, February 17, 1996. So I just suggest we're not talking about partisanship. The same response has been contained, I think, with the same views in most of the Nation's leading newspapers: The Times, The Post, and Newsday it goes on.

We have a duty to move forward, and all the protestations to the contrary, and all the charges of politicizing will do nothing more than make cloudy the matter. If some people want to do that, it is their right. This is a country where they can say what they want, but we're going to continue.

I hope we can do it in an atmosphere that is less partisan—there is a time for partisanship—and attempt to try to get the facts as quickly as we can. We owe that to the American people: To do it quickly, to do it thoroughly, and to be fair.

Now, I also have to say—and I'm not going to direct these comments to you, Mr. Ickes—I am going to say that we've had numerous witnesses here. Some have been absolutely as candid and as honest as they can be. Some have had what I call a memory fault that is just not believable. Some cannot recall specific events and times and dates, and I certainly understand that. So we have to weigh this.

I think most of our witnesses have been very accurate. But there has been a pattern of a number of people having selective memory lapses. And when we look into that pattern, we notice that these witnesses were involved in important events, that dates and times put them at important places, that there were important phone calls coming to people at various times that they're scheduled to be at a particular place, to come to Washington at a time that they ordinarily would not, to meet with an important person and they have no recollection of any of this, it's strange.

I use that as an example. It strains credibility, and it's the kind of thing that will not deter the Committee, but will encourage us, because it's just not reasonable.

For some of these events, not to be recalled, again, no one could recall all of them. It would be impossible. But when surrounded by the facts and circumstances and memos, and in some cases documents that people wrote themselves, their own notes, these events, should be outstanding in anyone's mind.

When there is a regular pattern of, "I don't recall, I don't remember." I think that's an indication of a failure to be responsive. That makes it difficult. But we will continue, notwithstanding.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Senator MOSELEY-BRAUN. Mr. Chertoff, if you don't mind—and again, I don't want to further any politicization of this event than has already occurred. But it seems to me in the first instance that we have to restrain ourselves from making conclusory statements and making speeches about the situation, particularly when we have witnesses. And second, yes, there have been problems. We've been hearing—going through them in the documents showing up, there have been problems.

Hopefully, the fullness of our investigation and our questioning will allow us to get to the very bottom of everything, one way or the other, for good or for ill. But I have to say, Mr. Chairman, there have been an awful lot of people who have been called on to do their best, and they've tried. So when a conclusory statement is made. He's now saying these things are terrible, they're suspicious, they make us even more suspicious. That's one side of it.

And it is a point, I guess, that has been made over and over again by the media and others. But I think some recognition ought to be given those individuals who have tried, who have complied with this Committee, have gone back and searched records, records that most people would have lost, or not known were around.

This has been a very exacting kind of exercise, as it should be. But to in one breath castigate people for not meeting the Committee's standards, and not at the same time recognize those people and those efforts that did, I think doesn't exactly leave this in as nonpolitical a footing as the Committee Chairman and I know the Ranking Member, and the other Members of this Committee, would like to see.

The CHAIRMAN. I think the Senator makes a good point. That's why I attempted to say that there have been many who have endeavored, and many, through no fault of their own—there are incidents you cannot personally recall, particularly when you ask them to go back 10 years or 11 years. That is quite true.

But I wanted to put this editorial in the record. Certainly The New York Times, I don't think, has a vested political interest one way or the other. I think when they call for us to complete our work, it's a very powerful message. Some editorial writers on both sides take different points of view. I understand that. We could fill the record with these things, but I thought this was of some note.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Ickes, you were asked your start date in the White House—I think you told us it was approximately the first Monday of 1994. But am I correct that you actually had been at the White House, not as an employee, but as a visitor at various times in 1993?

Mr. ICKES. Yes. I can't recall when. I think you're probably right. I had come down for one or two events as a visitor.

Mr. CHERTOFF. Did you have a special pass of some kind in 1993 that allowed you access in and out of the White House?

Mr. ICKES. No. I think that on each occasion that I came down, as I recall, Mr. Chertoff, I had to be waved in through the Secret Service.

Mr. CHERTOFF. You had no pass in 1993 that you carried that allowed you access that would not be granted to ordinary people?

Mr. ICKES. I may have. I don't recall it. I may have. I know that when I came, just to give you a brief history—when I came, I came up when the President-elect and Mrs. Clinton came up. And I was here for about 1 or 2 weeks. I may have gotten a hard pass then and kept it. I literally do not recall. I don't know.

Mr. CHERTOFF. Were you involved, by the way, during the campaign, in any Whitewater-related issues?

Mr. ICKES. No, I was not. I mean, I had heard the name Whitewater, but I was not involved in any meetings that I recall about Whitewater, and literally knew nothing about it. I knew that it involved a piece of land somewhere in Arkansas.

Mr. CHERTOFF. When I say Whitewater, I'm including Madison and the Rose Law Firm. You were not involved in any meetings in the campaign period involving Madison?

Mr. ICKES. Not that I recall. I was focused—I was working as Warren Christopher's Deputy at that time, during the transition, and was focused primarily on staffing situations.

Mr. CHERTOFF. I'm asking about the campaign. During the campaign, were you involved with any meetings that had to do with Rose or Madison?

Mr. ICKES. Not that I recall. Just so the record is corrected, I'm reminded that I did have a hard pass when I came up right after the transition. But it was subsequently pulled. It was revoked.

Mr. CHERTOFF. When was it revoked?

Mr. ICKES. I don't know, but if you want that record I will get it for you.

Mr. CHERTOFF. I think we'd appreciate that.

Mr. ICKES. OK.

Mr. CHERTOFF. Mr. Ickes, I want to focus your attention. You had raised the issue of the things you were doing in January 1994, apart from this. I want to put all this in perspective because I do think it's important.

We have established that, notwithstanding the debate and discussion about whether to have a Special Counsel in the first couple of weeks of 1994, there was eventually a tremendous amount of public pressure in the press on both sides of both parties in Congress insisting that there be a Special Counsel appointed. You don't disagree with that?

Mr. ICKES. You're given to understatement on that.

Mr. CHERTOFF. Finally, notwithstanding all the discussion about the pros and cons and the good and bad and the risks and the advantages, a Special Counsel was appointed by Attorney General Reno, correct?

Mr. ICKES. At the specific request of the President.

Mr. CHERTOFF. But it was also the case that, as we have established, that there remained open the issue of this civil investigation as to which you had made requests to get information concerning the statute of limitations as early as January 8, 1994, which was

within a matter of days after you arrived at the White House, because we've seen that in your assigned memorandum, correct?

Mr. ICKES. You're referring to the RTC?

Mr. CHERTOFF. Right.

Mr. ICKES. Yes.

Mr. CHERTOFF. That was not something that was preempted, or taken care of by the appointment of Special Counsel?

Mr. ICKES. As far as I know, it was not.

Mr. CHERTOFF. That was a matter that was going to be decided by, ultimately it was going to be under the supervision of the person who ran the RTC; right?

Mr. ICKES. At that time, in January, I was very unfamiliar—I would say almost completely unfamiliar with the process of the RTC. I came to learn that, yes.

Mr. CHERTOFF. The person who was in charge of the RTC at that point in time was Roger Altman; right?

Mr. ICKES. It was. I don't recall all the mechanics of it, but he was, I think, the acting head. I am not sure that was the correct title.

Mr. CHERTOFF. You knew Roger Altman from even before 1994; is that right?

Mr. ICKES. I had known him very casually, Mr. Chertoff, in connection with New York, but had never worked with him in any sense.

Mr. CHERTOFF. Had you ever dealt with him in his official capacity as Deputy Treasury Secretary during 1993?

Mr. ICKES. During 1993? I think I had one meeting with him. I can't recall when it was.

Mr. CHERTOFF. That was on a matter where you were representing someone in private practice?

Mr. ICKES. Yes. As I recall, it was.

Mr. CHERTOFF. So in 1994, even after the Special Counsel was appointed, there was this whole civil RTC investigation which was going to be supervised by Altman, or under the general authority of Roger Altman. That's the person whom you met with on February 2nd, along with Mr. Nussbaum, Ms. Hanson, and Mr. Eggleston in the White House; is that correct?

Mr. ICKES. Yes.

Mr. CHERTOFF. Now during the same period of time——

Mr. ICKES. February 1994?

Mr. CHERTOFF. February 2, 1994.

Mr. ICKES. Yes.

Mr. CHERTOFF. During this same period of time while this RTC civil investigation is open, the statute of limitations is going to run at the end of February, the beginning of March. You were concerned, were you not, that this was affecting the First Lady's ability to carry out the responsibilities she had with respect to health care?

Mr. ICKES. The RTC specifically, or Whitewater generally?

Mr. CHERTOFF. Whitewater generally.

Mr. ICKES. Whitewater generally, it was certainly something that was being discussed by senior members of the White House staff.

Mr. CHERTOFF. What was discussed that was having an effect upon the First Lady's ability to focus and concentrate on health care; is that right?

Mr. ICKES. There was concern about that among the staff.

Mr. CHERTOFF. That concern came from the observations of Mrs. Clinton and discussions with Mrs. Clinton, correct?

Mr. ICKES. I'm not sure it came from observations or discussions. I think that the staff was concerned that she had been designated by the President to head up the health care initiative. It was a very important initiative, and a large one, as you know. There was concern that Whitewater generally, as currently defined, would have a diversionary effect from the health care initiative.

Mr. CHERTOFF. This was discussed at the Whitewater Response Team meetings?

Mr. ICKES. I think it probably was. I don't recall any specific discussions, but I would be surprised if it wasn't, let me put it that way.

Mr. CHERTOFF. Now, we have a contemporaneous diary record of Mr. Altman from early January 1994, in which he indicates that he was told that on Whitewater, HRC was "paralyzed" by it if we don't solve this "within the next 2 days." We don't have to worry about her schedule on health care.

You recall yourself, do you not, from your meeting on January 16th, at Mr. Jordan's house that you had expressed a concern about the need not to have Mrs. Clinton appear to be distracted by Whitewater. Isn't that in your notes?

Mr. ICKES. I don't have them here. I'd have to find them. I'll take your word for it. Wait just a moment. What page?

Mr. CHERTOFF. 20793.

Mr. ICKES. Just a moment. I'm looking at item number 4. Is that the one you're looking at, Mr. Chertoff?

Mr. CHERTOFF. I'm looking at item number 3 and 4.

Mr. ICKES. Yes. Item number 3 dealt with legal costs. Item number 4 dealt with HRC as lawyer on this, et cetera. Kirk O'Donnell felt quite strongly about that, according to my notes.

Mr. CHERTOFF. Now were you aware that Ms. Williams had communicated this concept to Mr. Altman in January 1994?

Mr. ICKES. You're now referring to Mr. Altman's diary; correct?

Mr. CHERTOFF. Correct.

Mr. ICKES. What's the date of this diary?

Mr. CHERTOFF. It's either the 11th or the 4th of 1994.

Mr. ICKES. I see. OK.

Mr. CHERTOFF. Were you aware that Ms. Williams, who attended Whitewater Response Team meetings, had communicated the notion to Mr. Altman that Mrs. Clinton was paralyzed by Whitewater, and that it was something that needed to be addressed, or "you don't have to worry about her schedule on health care"?

Mr. ICKES. I don't think that I was. To the best of my recollection, Mr. Altman was not part of the Whitewater Response Team. And Ms. Williams may well have discussed this with him. I don't recall being part of that discussion, nor do I recall being informed about it.

Mr. CHERTOFF. But Mr. Altman was part of the health care effort, right?

Mr. ICKES. Yes, he was part of the health care.

Mr. CHERTOFF. Mr. Altman's diary goes on to say, "Maggie's strong inference was that the White House was trying to negotiate the scope of an Independent Counsel with Reno, and having enormous difficulty." Do you remember this inference being drawn in the Whitewater Response Team meetings?

Mr. ICKES. I do not. As I recall Mr. Altman's testimony, I think before this Committee, he went to great lengths basically to say that that was an inference that he himself drew. I think suggested very strongly, if not stated, that there was no basis in fact for it.

Mr. CHERTOFF. So in other words, he tried to eat his words, basically?

Mr. ICKES. That's your characterization.

Mr. CHERTOFF. The next line goes, "HRC doesn't want (the counsel) poking into 20 years of public life in Arkansas." Do you remember that notion being expressed in the Whitewater Response Team meetings?

Mr. ICKES. I don't remember that notion. Again, this is coming from Mr. Altman's diaries. I don't remember it, but I would say to you I wouldn't want anyone poking around in 20 years of my life.

Mr. CHERTOFF. I'm not going to touch that, Mr. Ickes.

Do you remember also in January 1994, in your assignments of January 9th—

Mr. ICKES. You're looking now at the assignment sheet?

Mr. CHERTOFF. Yes. 2758. This is one of the two relics of your notes that you were keeping with respect to this Whitewater Response Team.

Mr. ICKES. That was the 9th or the 10th?

Mr. CHERTOFF. You have two, the 9th or the 10th.

Mr. ICKES. I have them here.

Mr. CHERTOFF. Am I correct that these are the only surviving documents from the notes that you kept of the Whitewater Response Team meetings?

Mr. ICKES. Yes.

Mr. CHERTOFF. Which means that on no other days did you keep any notes?

Mr. ICKES. I don't recall keeping notes. I recall keeping notes on these assignments, having them typed up.

Mr. CHERTOFF. You don't recall keeping notes on the meetings?

Mr. ICKES. What?

Mr. CHERTOFF. You don't recall keeping notes on the Whitewater Response Team meetings?

Mr. ICKES. That's what I've testified to.

Mr. CHERTOFF. I'm sorry. I want to make sure we are 100 percent clear. Apart from assignment sheets, did you keep notes of the Whitewater Response Team meetings?

Mr. ICKES. The only notes I recall, Mr. Chertoff, were notes that I kept that were the basis for these two documents that have been turned over.

Mr. CHERTOFF. So you only kept 2 days of notes; is that it?

Mr. ICKES. That's what I've testified to.

Mr. CHERTOFF. And the other days, nothing was worth keeping records of? The other 14 days, or 12 days, where you were having meetings, you didn't keep any notes or any records?

Mr. ICKES. Mr. Chertoff, my function was to chair those meetings, and to make assignments, and to make sure that people were gathering information so that there could be an accurate response. I myself was not responding to the press. That was the responsibility of people like Mr. Gearan and others.

Mr. CHERTOFF. Again, Mr. Ickes, that was not my question. My question is very simply this. Did you regularly take notes at the meetings of the Whitewater Response Team?

Mr. ICKES. The notes I took were reduced to type, these type-written memos, Mr. Chertoff.

Mr. CHERTOFF. These two memos, one for the 9th and one for the 10th, are the only memos that you know of that reflect notes or records of the Whitewater Response Team meetings?

Mr. ICKES. The only memos that I know of, yes.

Mr. CHERTOFF. Are there other notes that you know of, besides these two memos, that relate to the Whitewater Response Team meetings?

Mr. ICKES. Obviously, Mr. Gearan took a lot of notes.

Mr. CHERTOFF. Of yours?

Mr. ICKES. Not that I know of.

Mr. CHERTOFF. Now on item 14 on this November 9th memo, there's a reference. It says here, "Reference in 1/8 press that Chris Wade, Arkansas realtor"——

Mr. ICKES. You're on the January 9th document?

Mr. CHERTOFF. That's right. Second page, item 14. "Reference in 1/8 press that Chris Wade"——

Senator SARBANES. Where are you reading from?

Mr. CHERTOFF. 20759.

Mr. ICKES. That's document 20889?

Mr. CHERTOFF. No, document 20759, January 9, 1994. You may have it under a different Bates number.

Mr. ICKES. I'm sorry.

Mr. CHERTOFF. It's your January 9, 1994 assignments.

Mr. ICKES. January 9th. Yes, I have it listed as 20888.

Mr. CHERTOFF. That's fine. We will use that one. Second page, paragraph 14.

Mr. ICKES. Yes.

The CHAIRMAN. I am going to ask that we suspend just for a moment, because the red light's come on. We will come back to that at the appropriate time.

Senator Sarbanes.

Senator SARBANES. Mr. Ickes, you were asked this question about Altman's diary, about Hillary Clinton doesn't want poking around in 20 years' life in Arkansas just now by Mr. Chertoff?

I just again want to, because this is being portrayed somehow as a sort of invalid or irresponsible position.

Now, Senator Dole has had a lot to say about this Independent Counsel idea. I just want to put those quotes in the record here.

On January 9, 1989, the St. Louis Post/Dispatch: "The whole Independent Counsel theory ought to be reviewed by Congress. They seem to have an unending license to do somebody in."

In August 1992, in The Washington Times, he said: "In far too many instances, the investigations conducted by the Independent Counsel have turned out to be partisan, political, fishing expedi-

tions, expeditions which have accomplished nothing more than wasting millions of tax dollars."

Another time, of course, he attacked Lawrence Walsh. He said, "Lawrence Walsh is completely out of control," said Dole. "Now he wants to turn his 6 years of incompetence into a personal vendetta against President Bush."

In May 1993, "The statute placed no limit on the amount of time and money an Independent Counsel can spend on his target, nor does it monitor the motives behind the counsel's actions. It has allowed someone like Lawrence Walsh to go down every blind alley, pursuing more conspiracy theories than Oliver Stone."

Senator Cochran said, "Independent Counsels have too much power and too little accountability. They are beyond the reach of anybody, any power on earth."

Now despite all of these statements, it was the position in the White House, as of the 12th of January, that Reno ought to appoint a Special Counsel; is that not correct?

Mr. ICKES. Yes.

Senator SARBANES. It's also the White House positions that the Independent Counsel statute ought to be reauthorized; was it not?

Mr. ICKES. That's correct, Senator. Yes. As I recall, it was.

Senator SARBANES. And in the end, the Independent Counsel statute was reauthorized, and we're now proceeding under that Counsel. These notes have come in. Gearan's notes came in. We've had extensive questioning with respect to those notes. Gearan was here a whole day. You've been here a whole day, now 7 hours, since we started at 10 this morning.

Yet, as we work through these notes and question them, I don't see any improprieties. Obviously, there was a lot of concern. You were under a lot of pressure from the press and others with respect to how to proceed in the early part of 1994. But you know, I frankly wish the notes had come sooner, because I don't think there's anything in the notes. And I would have avoided this whole notion that somehow the notes were being withheld for some purpose. To my mind, I see nothing, no reason in these notes, why they would be withheld, deliberately withheld.

We've worked it over now for 7 hours. We have your explanation and Ms. Sherburne's as to what happened. We have Mr. Gearan's explanation with respect to his notes. In both instances, as we work our way through the notes, I mean, we see concern about press inquiries, political implications; but I don't see any illegalities present in any of these notes. That's just a statement. You don't have to respond.

Mr. Chairman, how much longer do we have?

The CHAIRMAN. We might be able to do it in 15 or 20 minutes.

Mr. CHERTOFF. While we're on this memo of January 9th here, which is one of the memos that we only got a few days ago, "Item 14. Reference in 1/8 press that Chris Wade, Arkansas realtor, has document re Whitewater, but won't release unless President Clinton asks for them to be released. MW assigned 1/8." What was the assignment?

Mr. ICKES. I don't recall. I think the assignment was to find out about it. What might be involved, I have no idea.

Mr. CHERTOFF. Did you tell Mr. Waldman what you wanted him to do?

Mr. ICKES. Undoubtedly I did. I probably asked him to find out what he could about this document.

Mr. CHERTOFF. By contacting Mr. Wade?

Mr. ICKES. I don't recall asking him to contact Mr. Wade, but I might have.

Mr. CHERTOFF. Did he find out?

Mr. ICKES. I don't recall as I sit here today.

Mr. CHERTOFF. What was the upshot?

Mr. ICKES. As I sit here today, I do not know, Mr. Chertoff.

Mr. CHERTOFF. Do you have any record or notes about what the upshot was with respect to the document that Mr. Wade wouldn't release?

Mr. ICKES. No, not that I recall.

Mr. CHERTOFF. Did you ask Mr. Waldman to contact Skip Rutherford about Beverly Bassett?

Mr. ICKES. Not that I recall.

Mr. CHERTOFF. Is there any record you have in your possession that might shed light upon any contact you had with Mr. Waldman about getting in touch with Mr. Rutherford?

Mr. ICKES. All the records I have I think have been submitted to you.

Mr. CHERTOFF. You had numerous meetings with Mr. Kendall during January and February; right?

Mr. ICKES. I had a number of meetings.

Mr. CHERTOFF. Did you keep notes of those meetings?

Mr. ICKES. I did not.

Mr. CHERTOFF. Is there a reason you didn't keep notes of those meetings?

Mr. ICKES. There was no need for me to.

Mr. CHERTOFF. Unlike the Whitewater response situation where you did keep notes because it was assignments?

Mr. ICKES. Yes.

Mr. CHERTOFF. By the way, if I look at this January 9th memo, this is the January 9, 1994 assignments. I gather, because you're very organized, you put it at footnote two at the bottom. Whenever a 2 appears, it indicates the date the assignment was made.

You have, for example, various assignments that appear to have been parceled out on January 6th, January 7th, and January 8th. Where are the assignment memoranda for those days?

Mr. ICKES. They're all consolidated into these.

Mr. CHERTOFF. So there would have been notes on the 6th, 7th, and 8th, as well as the 9th? And all of those were consolidated into this?

Mr. ICKES. Into these.

Mr. CHERTOFF. Into this memo?

Mr. ICKES. As far as I can recall, yes.

Mr. CHERTOFF. In fact, is it fair to say there would likely have been some notes for every day in which there was a meeting relating to the Whitewater Response Team?

Mr. ICKES. There may well have been. But as I say, once they were reduced to typing, or to the typewritten memo, I had no more need for them.

Mr. CHERTOFF. I'll yield to the Chairman.

The CHAIRMAN. Mr. Ickes, if you could go to Mr. Gearan's type-written notes, can you identify those? They must be about 15 pages, handwritten notes, excuse me. A handwritten—

Mr. ICKES. I have those, Mr. Chairman.

The CHAIRMAN. About two-thirds of the way back in the packet, under S20576—

Mr. ICKES. I have it.

The CHAIRMAN. We've gone over this before. But would you go to 0575, the page in front of that? The bottom of the page says, "Meeting of attorneys outside of White House." No, you know what? It's on 076, excuse me.

Mr. ICKES. 076?

The CHAIRMAN. Excuse me, the bottom of the page. You have HI—obviously, we understand, these are Mr. Gearan's notes, they're not your notes, OK. But he's identified you, HI. Meetings of attorneys outside of White House, all right?

Then he says, basically that you're indicating that Beverly Bassett is very important, and that this has to be done, and it's important; right? Is that a reasonable interpretation? "Let's not talk it to death. Let's just get it done." Right?

Mr. ICKES. That's basically what it says, yes.

The CHAIRMAN. We're skipping all of the hyperbole?

Mr. ICKES. Yes.

The CHAIRMAN. Let's go to the next page. That's where I got a little off. Again—

Mr. ICKES. You're now going to 77, Mr. Chairman?

The CHAIRMAN. Right, 77, in which again Mr. Gearan identifies yourself, HI. He says, "We can't send PB, BL, MW. It will come out." Who is PB?

Mr. ICKES. As best as I can recollect, it's probably Paul Begala.

The CHAIRMAN. BL?

Mr. ICKES. BL undoubtedly refers to Bruce Lindsey.

The CHAIRMAN. And MW?

Mr. ICKES. I think refers to Michael Waldman.

The CHAIRMAN. Obviously, we've had extended discourse between yourself and Mr. Chertoff on that. You have indicated—and if I am paraphrasing you the wrong way, I want to get this straight in my own mind.

You're concerned that if someone such as Mr. Waldman or Mr. Lindsey or Mr. Begala went down to check out this story with her, and to meet with her, that the media may interpret that the White House was attempting to influence her or meet with her, and it might appear inappropriate. Is that a fair—

Mr. ICKES. The media, or others.

The CHAIRMAN. It might appear to the media and to others inappropriate?

Mr. ICKES. Right. There was nothing in my view, Mr. Chairman nothing inappropriate about having somebody meet with her. But I was concerned about, for lack of a better phrase, the adverse public relations that might come out of that.

The CHAIRMAN. I understand that.

It goes on, and it says, "Item by item, make sure her story is OK." So in other words, whatever she has said previously in the

campaign, whatever she said after the campaign, that's the story, and there's no problems; right?

Mr. ICKES. Basically, yes. Again, Mr. Chairman, you have to remember that we were in Washington at the time. There were a very large number of press questions coming in. Major papers were editorializing about maybe that she had shown favoritism. We had to respond to those questions. This is something that happened in Arkansas. We basically wanted to know that the facts that we were giving out were in fact the accurate facts. The credibility of the White House was involved.

The CHAIRMAN. If you're giving out incorrect facts or information, it could be a real problem; right?

Mr. ICKES. It can be.

The CHAIRMAN. It could have been. It's not a trick question.

Mr. ICKES. It's not a trick question, and, look. We have an obligation to give out accurate information.

The CHAIRMAN. The next one, it says "Tisdale? In Lindsey firm." Would it be fair to say that you were concerned because—you weren't concerned. Somebody was concerned that they used Tisdale to make contact with Ms. Schaffer if that came out? There's a question. Do you use Tisdale?

Mr. ICKES. Again, Mr. Chairman, I didn't write these notes, which you recognize. I don't know whether I said this, or whether somebody else said this. There were a number of people in the room in these discussions. Somebody may have raised these names, and questions may have been raised by others in the room. Hence, Mr. Gearan wrote it—

The CHAIRMAN. About the appropriateness of using them?

Mr. ICKES. Not the appropriateness, but again the possible adverse public relations spin that might be contributed by people. Were they used because of their relationships with others in the White House?

The CHAIRMAN. You see, here is the problem. You have "Skip? WH." That's Skip Rutherford, a friend of the Clintons down in Arkansas. "BP friend, New York lawyer. Quinn, arm's length." That's to keep him arm's length. Mr. Waldman testifies that he did, in fact, call Skip Rutherford about Ms. Schaffer, and a possible trip to Arkansas. Why did he do that?

Mr. ICKES. I don't know. You'll have to ask him.

The CHAIRMAN. Waldman worked for Gearan; right?

Mr. ICKES. At that point in time, I think Waldman was in the Communications Department, yes.

The CHAIRMAN. He was part of this team?

Mr. ICKES. He was certainly involved in these meetings on a regular basis.

The CHAIRMAN. Right. You see, you get done saying how important it is to get on top of this thing. The President sends a memo, basically a memo because he says in his notes, get on top of this, stay on top of this, or words to that effect. Indeed thereafter, this comes up in one of these meetings, January 7th, or whenever the date is. This starts in after. They say, who do we send? And they say, don't send somebody from the White House as such; but Michael Waldman goes ahead and contacts Mr. Rutherford.

Now let me ask you. They're reporting to you. They're telling you what's going on. You're meeting regularly. Did he get back to you? Did he tell you? Did anyone tell you about this?

Mr. ICKES. I have no recollection that he did.

The CHAIRMAN. You have no recollection that he got hold of Rutherford? You didn't tell them to get hold of Rutherford?

Mr. ICKES. I have no recollection of asking him to get ahold of Rutherford. He may have done it on his own. He knew about the firm. All of us had worked in Arkansas during the campaign and through the transition. And Rutherford was a frequent visitor at the White House.

The CHAIRMAN. You see, I'm looking at this in light of the fact that this was a communique from the President of the United States that resulted, eventually that communique being the President's handwritten notes on the December editorial of The New York Times, as it related to Bassett. "Stay on top of this."

We see these notes in which they say very clearly, "This thing is going to blow up. We'd better stay on top of it." Then here's a discussion, who we can't send, and then, "Item by item, make sure her story is OK." Then Tisdale, Lindsey, Skip Rutherford—what do we have here? Waldman knows—we know that he does make contact. But you say you didn't order him to make contact.

Mr. ICKES. I don't know whether he did or whether he didn't. I have no recollection of it.

The CHAIRMAN. I think yesterday he gave his deposition. Michael Waldman testified that he did indeed call Skip Rutherford about Ms. Schaffer, and a possible trip to Arkansas.

Mr. BEN-VENISTE. Mr. Chairman, we haven't seen the transcript of this, but I'm advised—I wasn't at the depo—but that his testimony did not concern that memo.

The CHAIRMAN. I understood that it did. Alison took that. But the fact is that from Ms. Bassett's statement, she said that Mr. Rutherford did contact her. So you see, I have to ask, who in the White House, and indeed made that contact? Waldman says he made the contact. Who told him to do that? Was he at a high enough level that he would just go out and do this? And then when he made the contact, did he report back?

Mr. ICKES. First of all, Mr. Chairman, I don't have any recollection of him contacting or calling back. I do know that this AP story that you referred to earlier apparently—well, not apparently—says that it was Ms. Schaffer's husband who was called by Skip Rutherford. But in any event, I have no recollection of telling Mr. Waldman to contact either Skip Rutherford, or certainly Ms. Schaffer. I had reservations about it. I stress again, there was nothing illegal about it. But I had concerns about the possible adverse public relations aspect.

The White House is not a monolithic creature. Sometimes people go off and do things on their own.

The CHAIRMAN. Would he have told Mr. Lindsey about this?

Mr. ICKES. He may have.

The CHAIRMAN. Here's where I have a problem. The importance at that time of this situation involving Beverly Bassett Schaffer is obvious. It's obvious from the notes here. It's obvious from the fact that the President wrote about it. He said, "Stay on top of this."

It's obvious that there was not only an attempt, but indeed as it related to somebody meeting with Beverly Bassett Schaffer's husband.

Speaking about that, we had testimony. She testified to it. And it seems to me that as the head of this team, you would be able to reflect on what took place. We don't see that. Yet, for example, in that memorandum of January 9th, you go through copious, painstaking identification of who was tasked to do what? I'm just wondering how it is that there's no report with respect to this rather important assignment?

Mr. ICKES. Mr. Chairman, my view is not shared by everyone in the group. It was my view that it would be the better part of discretion not to have White House people contact Ms. Schaffer, although there was absolutely nothing illegal, untoward, or unethical about having a contact made, especially in view of the fact that what she had said was supportive of Mrs. Clinton's relationship as a lawyer with Madison Guaranty. That is not to say that some people didn't go off and make phone calls on their own. I can't vouch for that.

All I can tell you is, as I sit here today, I have no recollection of Michael Waldman contacting Skip Rutherford, or telling me that he had. I'm not saying that he didn't. I'm not even saying that he may have told me. But I have no recollection of it.

The CHAIRMAN. Two questions, and we'll wrap it up.

Mr. CHERTOFF. Just a couple of quick things.

Mr. Ickes, first of all, in the course of the discussion about issues with Beverly Bassett Schaffer in January and February of 1994, was there a discussion about her communications with Mrs. Clinton concerning something called Southern Development Bank?

Mr. ICKES. I'm sorry. Would you repeat that?

Mr. CHERTOFF. In the course of the discussions at the White-water Response Team in January and February of 1994 about Beverly Bassett, was there discussion about communication between Beverly Bassett and Mrs. Clinton concerning Southern Development Bank?

Mr. ICKES. Not that I recall.

Senator SARBANES. That's not part of our scope, Mr. Chairman.

Mr. CHERTOFF. What was the answer?

Mr. ICKES. Not that I recall.

Mr. CHERTOFF. It doesn't ring a bell?

Mr. ICKES. It does not ring a bell with me.

Mr. CHERTOFF. I also want to direct your attention to a period of time of the campaign. I want to make sure we're quite clear on this, because you just testified a moment ago, I believe. You were in Arkansas during the campaign from time to time?

Mr. ICKES. Let me be very precise about that. I was in Arkansas after the general election of 1992, where I was working with now Secretary of State Warren Christopher as his top Deputy with respect to the transition. I had been in Arkansas from time to time during the campaign, literally on a 1- or 2-day foray.

I'm sorry—literally just one last piece of information. Others, I don't want to vouch for Michael Waldman. I'd have to check with him, or you'd have to check with him. It is my recollection, however, that Michael Waldman probably was in Arkansas at least

during the general election campaign, and maybe even during the primary campaign. I was not.

Mr. CHERTOFF. I want to know, during the campaign or during the transition in 1992, were you present in the campaign office with people who, to your knowledge or observation, were reviewing Rose Law Firm files?

Mr. ICKES. Were they reviewing—was I present when people were in my presence reviewing?

Mr. CHERTOFF. Yes, correct.

Mr. ICKES. I have no recollection of it. The most I knew about Whitewater is that it had to do with a river and a piece of land.

Mr. CHERTOFF. When you look at your memorandum of March 1st to the First Lady, which is accompanied by the memo to you from Mr. Eggleston, that begins at S7288.

Mr. ICKES. OK. 7288. I have that.

Mr. CHERTOFF. Now the memo that Mr. Eggleston prepared for you is in the form of questions and answers. Am I correct that you furnished Mr. Eggleston with the questions you wanted him to answer?

Mr. ICKES. I don't remember the precise conversation. As I testified here today, I think that as I recall, the genesis of this memo was three things. One, the two documents that are appended to it, the FDIC report, the RTC report, as well as what I recall—I may be in error on this—either an article or an editorial in The Wall Street Journal, about which I think the President may have asked me questions. I know that I read it and was confused, and I asked him to prepare the memo.

Mr. CHERTOFF. If you will turn to page 6 of the memo, which is S7292. You will see the last question that was posed here, and answered.

Mr. ICKES. Wait just a moment. I'm on the wrong page, 7292?

Mr. CHERTOFF. Right, page 6.

Mr. ICKES. Yes.

Mr. CHERTOFF. The last question posed in the memo reads as follows: "Now that Mr. Altman as Acting CEO of the RTC has recused himself from further involvement in Madison Guaranty matters, who at the RTC will be the decisionmaker on whether to bring a civil action arising out of the failure of Madison Guaranty?" Is that one of the questions the President asked you?

Mr. ICKES. I see. You're reading the indented part.

Mr. CHERTOFF. Yes, the question. I will read it again. "Now that Mr. Altman as Acting CEO of the RTC has recused himself from further involvement in Madison Guaranty matters, who at the RTC will be the decisionmaker on whether to bring a civil action arising out of the failure of Madison Guaranty?" Is that a question the President asked you?

Mr. ICKES. I don't recall him asking me that. He may well have, but I don't recall it.

Mr. CHERTOFF. Why did you request that Mr. Eggleston give you an answer to that question?

Mr. ICKES. I wanted to have as much information as possible.

Mr. CHERTOFF. What was the significance in your mind now at the end of February, after having gone through this issue with Altman and the recusal, and identifying who the decisionmaker would

be on whether there was going to be a case brought by the RTC with respect to the Rose Law Firm? Why did you care who the identity of the decisionmaker is?

Mr. ICKES. As I recall the sequence of events, Mr. Chertoff, Mr. Altman had recused himself.

Mr. CHERTOFF. On the 26th?

Mr. ICKES. On the 25th, I think.

Mr. CHERTOFF. 25th, 26th, yes. Why did you need to know? Why were you concerned?

Mr. ICKES. I wasn't concerned. I just wanted to know as a matter of information.

Mr. CHERTOFF. Finally, Mr. Ickes, I just want to ask you this. I gather that the memorandum of January 9, 1994, and the memorandum of January 10, 1994, which are assignments, was meant to be circulated to the entire Whitewater group.

Mr. ICKES. You're looking now at the memorandum of the 9th?

Mr. CHERTOFF. Right, yes. Would it be fair to say that there would have been at least a half-dozen copies of this that would have been circulated around to the people who were the regular attendees of the group?

Mr. ICKES. I think it's fair to say, Mr. Chertoff, that these circulated to those to whom assignments had been made. It may well have circulated to others in the group.

Mr. CHERTOFF. Well, what's interesting here, I think, is that we have received two copies of this in the last 2 weeks. One of these was contained in the files that Mr. Altman discovered very, very recently. And one was contained in your files. I don't believe—I'm sure I'll be corrected if I'm wrong—that we have ever seen these memos in anybody else's files, or in any prior production. Were these supposed to be held in any particularly confidential way?

Mr. ICKES. Were these supposed to be held confidentially?

Mr. CHERTOFF. Yes.

Mr. ICKES. I think there was a general working assumption that the work and the proceedings of the Whitewater working group was to be held basically within that group, obviously. Other people knew about it. I was reporting on a regular basis to Mr. McLarty, et cetera. I don't think these were confidential, maybe, in the sense that you're using them. But we would ask people not to just sort of leave them around.

Mr. CHERTOFF. I want to ask you this, I want to move to the present time. In your capacity now as the Deputy White House Chief of Staff to whom Ms. Sherburne reports, have you been involved at all in the making of policy decisions about how documents are being produced?

Mr. ICKES. She keeps me informed, basically. That is, in my view, a question for lawyers to decide who are skilled in that area. And Ms. Sherburne runs the Whitewater team inside the White House. She does report to me. She keeps me informed on a regular basis. But with respect to those kinds of matters, those are matters that lawyers far more qualified than I should make. She and Jack Quinn, who is now the Counsel, as you know, are very much involved in that.

Mr. CHERTOFF. Is it correct as the paper reported today that Mr. Panetta only very recently has established a team of lawyers now

who will be responsible for ensuring that production is complied with?

Mr. ICKES. I have not read the paper, and I've not talked to Mr. Panetta for 3 or 4 days. I would doubt that report, but I haven't read the paper. There has been a team of lawyers in place under the leadership of Ms. Sherburne, and they have been responsible for overseeing this matter, and for the production of documents, and in my view, doing a very good job of it.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Apparently the Counsel on both sides who took Waldman's deposition have differing recollections, because our Counsel says that Waldman said that he did not talk with Beverly Bassett Schaffer. And in any event—

The CHAIRMAN. Rutherford was the person who then made contact with either Ms. Schaffer or with her husband.

Senator SARBANES. I think he also said he wasn't aware of anyone making contact.

The CHAIRMAN. That's right. In other words, the contact with Rutherford, for the purposes thereafter of making contact with Beverly Bassett Schaffer—

Senator SARBANES. Waldman was not aware of that. Ah, there's a difference of opinion.

The CHAIRMAN. Waldman contacted Rutherford, is that correct? You are saying no. We'll have Waldman here, and we'll see the depositions. We'll know tomorrow.

Mr. BEN-VENISTE. Mr. Chairman, the news report that talks about Mr. Rutherford's contact, was contact not to Ms. Schaffer, but to Ms. Schaffer's husband, Archie Schaffer.

The CHAIRMAN. That's a pretty good contact. And I don't think at this hour, we want to begin splitting hairs.

Mr. Ben-Veniste, they thought they would speak to the husband in order to speak to Ms. Schaffer, because she was very upset and didn't want to speak to anybody. So they did speak to Archie.

Senator SARBANES. I want to make the observation, since it's already come up. She felt strongly, apparently, that she had been stalked by Mr. Bossie.

The CHAIRMAN. Senator, that's inflammatory. That's not a fact.

Senator SARBANES. She stated it herself when she was here.

The CHAIRMAN. There's been unfortunately an attempt today—very unfairly, but we will get the information and place it in the record—to impune Mr. Bossie and to attempt to say that he's still working for that group.

He's indicated to me just a short time ago that he terminated his relationship with that group, that he wasn't aware of that letter, that he was upset that that letter was sent out, and does not reflect his sentiments. We will have those answers in writing fully for the record, so that all of the Members will have the opportunity to review it.

I'm not happy with a letter like that, which claims that any one of our Members does such things. But again let me say that there will be letters from various groups who don't think we are aggressive enough, who think that we should cease, that will characterize activities of various Members of the Committee, of staff of the Committee in one way or the other. We just don't have control over

that. Certainly we have an obligation if there is some kind of charge that may impune the integrity of the Committee to look into that. We will and we will have a full response with respect to that.

Mr. BEN-VENISTE. If I may, Mr. Chairman, the point that I was making is that the news story that raises all of this about Mr. Rutherford's contact indicates that the contact was made by Mr. Rutherford to Archie Schaffer, who was then asked whether he thought his wife, Ms. Bassett Schaffer, would agree to have a press conference on her connection to the Madison Guaranty matter.

So all of this—and I have the sense that I am in the movie Groundhog Day again.

The CHAIRMAN. We're going to go over it again, because you see, when you bring it up like that, I'm going to say, "I said to the witness, the thing that concerned me—and I have it written here—is, Michael Waldman testified, and that was in his deposition, that he did in fact call Skip Rutherford and Ms. Schaffer about a possible trip to Arkansas." He says he didn't go to meet with her, but it's clear from Ms. Bassett's statement that Mr. Rutherford did indeed contact her husband. I said her, but let me be more precise—through her husband. I wanted to know whether Mr. Ickes assigned this task to Mr. Waldman.

Now, let's go to the essence of what the Chair attempted to elicit. My question is, how is it that Waldman undertook this, and did he report to Mr. Ickes? Mr. Ickes says he didn't assign him. Mr. Ickes indicates he has no recollection of him reporting back to him. But the fact of the matter is that Mr. Waldman did reach out to Skip Rutherford for the purposes of making contact with Ms. Schaffer, whether through her directly or through her husband.

Now come on. You'll bring it up and I'll have to respond fully. This will take another 10 minutes.

Mr. BEN-VENISTE. If I may, Mr. Chairman, I know you don't mean to interrupt me. But with respect to all of this, are you aware of whether Ms. Bassett Schaffer did have a press conference in January?

Mr. ICKES. As I sit here today, I have no recollection of it, Mr. Ben-Veniste.

Mr. BEN-VENISTE. The record indicates here—we have been at this for many, many, many hours, and looked at all the documents—that Ms. Schaffer has been consistent all along in the statement that she made, that her contacts with Madison Bank were appropriate. That has been corroborated by the Federal regulators who reviewed her contact. That the matter about which she was contacted never bore fruit, because she placed a prerequisite in the road toward Madison issuing preferred stock. That never happened.

So now we are at the point of looking at whether an individual from the White House, directly or indirectly, contacted somebody else to determine whether Ms. Bassett Schaffer would have a press conference to say the same thing that she said before. That's basically it. Is there anything that strikes you as remotely improper in that series of events, Mr. Ickes?

Mr. ICKES. Nothing improper about it. As I say, I thought there was nothing. And to this day, I think there's nothing improper about having people contact Ms. Bassett Schaffer even if she were

a potential witness. But I have already explained the grounds on which I have very deep reservations.

Mr. BEN-VENISTE. We have now reviewed all the documents that have been provided. You've been questioned now for 7½ hours on anything that is remotely interesting about those documents. I have to tell you that I haven't found anything new or startling or remarkable about them.

I want to thank you for your patience here today.

The CHAIRMAN. Since we are discussing conclusions, and everyone has a right to do that, Mr. Chertoff would like to make his observations about what we found that wasn't known before.

I will tell you this. It raises very real questions to me as it relates to the production of documents from other witnesses. And I mentioned this last week. When I get a document as detailed as the memos of January 9th and 10th, in which Mr. Ickes' tasks various assignments, and we get, I think, from only one other witness or two others a copy of this memo, I say: What happened to those files? What happened to that information? What happened to the information that would have been accumulated in carrying out the various tasks covered by that memo of the 9th and 10th? Why hasn't that information been provided? Where is it? Was this information which was obviously sensitive and important and called for a task force, thrown away, discarded, lost? What took place? Those are not questions I asked Mr. Ickes. But these are questions that I think any reasonable person who is asking for information would raise. So I have a number of questions and we could go on.

Mr. Chertoff, you can make a couple of quick observations, and we can go back and forth. Go ahead.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Because I keep hearing over and over again this refrain that there's nothing new and startling. And I will tell you, since Mr. Ben-Veniste opened the door on it, that I have a vivid recollection of a deposition 2 years ago under oath which I read you portions of, in which both sides were trying to find out what was in the state of mind of people in the White House when they met with Roger Altman on February 2nd to try to keep him in charge of this investigation, and while the clock was running out on the statute of limitations on the civil case.

I'll tell you, if that clock had run out, none of the things about the billing records, or what was actually done—none of that would ever have been found out or seen the light of day. And specifically, in order to find out whether it was part of the intention of the plan in the White House to run the clock out on the statute of limitations, both Mr. Codinha, who was the Democratic Counsel, and I asked specifically again and again about discussions involving the statute of limitations.

In terms of what was produced in this set of notes, I have vividly in my mind a set of questions about whether any of Mr. Ickes' notes contained the words "statute of limitations." And I can still hear the answer: No, he doesn't recall statute of limitations in any of the notes except in the press clips. Imagine my surprise and shock to get the notes, and on page 1, it says "statute of limitations." Memo after memo talks about an assignment for statute of limitations. That startled me, and that is new.

The CHAIRMAN. Mr. Ben-Veniste, do you have a last concluding remark?

Mr. BEN-VENISTE. If the mention of statute of limitations is the smoking gun from these documents, then I'm prepared to say, let's call it a day.

The CHAIRMAN. I don't think anybody said smoking gun, but I think Counsel did indicate that that was new.

I want to thank the witness. I want to thank both Counsels because this is not easy. Neither Mr. Ben-Veniste nor Mr. Chertoff have easy jobs. You have to balance the interests of your respective Members of the Committee.

I want to say the same to my colleague Senator Sarbanes, attempting to do the business of the Committee, attempting to seek the facts without being overbearing one way or the other. It's not easy. Sometimes we can go amiss. But we're going to try to do the best we can to continue in this effort. So I want to pay particular attention to the staff, the staff on both sides, Minority and Majority, who have done, I think, an outstanding job day in and day out. There may be some wrinkles at times, but I think it is worthwhile saying that both our Chief Counsels and the people who work for them have done an outstanding job.

Senator SARBANES. Mr. Chairman, what is next week?

The CHAIRMAN. Our next meeting will be Wednesday at 10:00 o'clock. We have a number of witnesses from Arkansas that relates to, I think, the matter of—

Mr. CHERTOFF. Certain leases that were State leases of Madison.

Senator SARBANES. Do we know who the witnesses are?

Mr. CHERTOFF. It's the witnesses that were essentially going to be on for this Wednesday, but there was a scheduling problem with one of the witnesses. Their names are in the original list we gave out the previous week.

Senator SARBANES. There's no meeting on Tuesday?

The CHAIRMAN. No.

Senator SARBANES. Is there a meeting on Thursday?

The CHAIRMAN. I would hope we could take this matter on Tuesday, certainly by Thursday, and hope that that leadership would work out a manner by which to undertake the question of the Committee's continued work, in order to complete it.

So it would be my hope that sometime we could schedule debate on the matter Tuesday. Again, it seems to me that there's a time-frame there. I don't know if we want to agree to a time limit. That's up to the leadership. I understand their offices have been in contact with one another. And as pursuant to the initial enabling legislation, that is something they have to do before we move to the Floor. But it would be my intention to move to the Floor, either on Tuesday or Thursday, with respect to the question of the continued work of the Committee.

Senator SARBANES. Is the Chairman preparing a Resolution that will be taken up?

The CHAIRMAN. It would be my intent to go forward with the Resolution. However, it would be dangerous to do that without the leadership. And I believe that the legislative authority requires that the Majority and Minority leaders meet in consultation to decide the course of action to take.

It would be my hope that after those consultations, I would hope that they could work out an agreement whereby the Committee could continue its work. If not, it would be my intention to move a memorandum or a Resolution to the Floor. We have not drawn that Resolution. Again we will sit with our leadership in consultation to see what they deem might be appropriate to deal with this question.

Senator SARBANES. There's not such a Resolution available to look at.

The CHAIRMAN. Not that I'm aware of. I think we have spoken generally about continuing. Yet we've talked about generally a sum of \$600,000. And without setting a specific time, so that we don't run into a situation where there may be some who might be intent on running out the clock, it would be my hope—and I've said before—that after the conclusion of the trial in Little Rock, which starts on March 4th—at least it's scheduled to, and there are a number of key witnesses that I believe are necessary for us to get testimony. Mr. Wade is one of them. I believe his lawyer has indicated that he would plead the Fifth Amendment.

There is a question of immunity for Mr. Wade. There is a question, obviously—we were very careful in the memo not to intrude on the Special Counsel, that it would appear that we would have to get the Special Counsel's acquiescence. We have not raised that question with him. It wouldn't be appropriate.

But we would in all likelihood ask the Special Counsel if he had any objection to us granting immunity to a number of witnesses after he is done with them. If he has no problem with that, that is one way we could proceed to get the testimony from these various witnesses.

So here we have one, Mr. Wade, who raises the Fifth Amendment, his lawyer does. We are prohibited from even bringing him in because his attorney has put us on notice that he would raise the Fifth Amendment.

We stand in recess until Wednesday at 10:00 o'clock.

[Whereupon, at 5:50 p.m., the hearing was recessed, to reconvene at 10:00 a.m. on Wednesday, February 28, 1996.]

[Appendix supplied for the record follows:]

1993

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

FAX: (202) 393-8760

(202) 371-7000

DIRECT DIAL
(202) 371- 7180

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
SAN FRANCISCO
WILMINGTON
—
BEIJING
BRUSSELS
BUDAPEST
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
PRAGUE
SYDNEY
TOKYO
TORONTO

March 25, 1996

VIA FACSIMILE AND U.S. MAIL

Senator Alfonse D'Amato
Chairman
Senator Paul Sarbanes
Ranking Member
Senate Special Committee
on Whitewater
534 Dirksen Building
Washington, DC 20510-6075

Re: Harold Ickes Testimony of February
22, 1996

Dear Senator D'Amato and Senator Sarbanes:

Pursuant to the notice and instructions provided to us by the Committee, we will shortly be submitting certain pages from the draft transcript of the above-referenced testimony of our client, Harold Ickes, marked to show appropriate corrections and clarifications.

In the course of reviewing the transcript, however, it has become apparent that the limitations the Committee places on making corrections -- which permit modifications only under very narrow circumstances -- do not provide an opportunity to address the numerous mischaracterizations of the record and unfounded assumptions of fact contained in statements preceding many of the questions or sometimes, incorporated in them. Accordingly, any corrections we submit would not and could not include all the clarifications that would be necessary to respond to all such inaccurate statements or inferences.

A few illustrations will suffice to demonstrate our concern. At several points, for example, it was

1994

Senator Alfonse D'Amato
Chairman
Senator Paul Sarbanes
Ranking Member

March 25, 1996
Page 2

suggested that the White House was "acutely aware" of or unduly concerned with the statute of limitations as applied to the RTC investigation of Madison Guaranty, and that there was an intentional plan by the White House to let the statute run out. This simply is not supported by the documents in question, which showed that the statute of limitations was just one of numerous items on the Whitewater response group's agenda, and that the White House understood that the statute could always be extended. Most importantly, it ignores the fact that the President signed into law on February 12, 1994 a bill extending the statute of limitations.

Similarly mischaracterizations and baseless speculation preceded questions to Mr. Ickes about his interview by White House Counsel in July 1994. For example, it was stated that Mr. Ickes did not submit to an interview by White House Counsel -- when Committee staff was aware that he did -- and that private counsel were intentionally "interposed" between the witness and White House counsel for some nefarious reason, when there is absolutely no basis for that inference in the record. Other incorrect speculation was stated as fact in connection with questions relating to events preceding Mr. Ickes' Senate deposition in July 1994.

This kind of interrogation leads us to conclude much of the questioning had nothing to do with fact-finding or legislative oversight, and everything to do, in Senator Dodd's words, with playing "gottcha" to try to enare witnesses. This is similar to what occurred during Mr. Ickes' deposition, when counsel refused to show the witness his own notes from the February 2 meeting to refresh his recollection. An inquiry truly aimed at establishing the facts would want to make sure a witness's recollection was refreshed by accurate, contemporaneous notes -- not to trip him up and have him guess at answers.

1995

Senator Alfonse D'Amato
Chairman
Senator Paul Sarbanes
Ranking Member

March 25, 1996
Page 3

In closing, Mr. Ickes will provide the Committee with minor corrections to the transcript shortly. I would ask that they, along with this letter, be incorporated into the official record of the Committee's proceedings.

Sincerely,



Robert S. Bennett

cc: Edward M. Malan, Editor
Senate Banking Committee

ALFONSO M. D'AMATO, NEW YORK, CHAIRMAN

PHIL GRAMM, TEXAS
 RICHARD C. SHIELDS, ALABAMA
 CHRISTOPHER B. BOND, MISSOURI
 CONNIE MACKE, FLORIDA
 LAUCH FAIRCLOTH, NORTH CAROLINA
 ROBERT F. BENNETT, UTAH
 ROD GRAMS, MINNESOTA
 PETE V. DOMENICI, NEW MEXICO

PAUL S. SARIBANIS, MARYLAND
 CHRISTOPHER J. DODD, CONNECTICUT
 JOHN F. HENRY, MASSACHUSETTS
 RICHARD H. BRYAN, NEVADA
 BARBARA BOXER, CALIFORNIA
 CAROL MOSELEY BRAUN, ILLINOIS
 PATTY MURRAY, WASHINGTON

HOWARD A. MENHELL, STAFF DIRECTOR
 ROBERT J. GIUFFRÀ, JR., CHIEF COUNSEL
 PHILIP S. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

March 26, 1996

Via Facsimile and U.S. Mail

Robert S. Bennett, Esq.
 Skadden, Arps, Slate, Meagher & Flom
 1440 New York Avenue, NW
 Washington, D.C. 20005

Dear Mr. Bennett:

I write in response to your letter of March 25, 1996, to the Whitewater Special Committee regarding Harold Ickes' testimony at the Committee's hearing on February 22, 1996. As you requested, your letter will be included in the official record of the Committee's proceedings.

Alterations to Committee transcripts are permitted to correct grammatical errors, obvious errors of fact and errors in transcription. Mr. Ickes, like all other witnesses, was questioned under oath and on the record. The Committee does not authorize witnesses to use the errata sheet to change the substance their testimony after the fact. That practice would defeat the purpose of taking sworn testimony.

Mr. Ickes was represented by experienced counsel during his testimony. He certainly had every opportunity during the day-long hearing to make any statements, modifications, or clarifications regarding the subject matters covered by his testimony.

Aside from vague and unsupported protestations, your letter raised three specific issues. We believe that none has any merit.

First, you complained about Committee counsel's question to Mr. Ickes regarding the relevance of the statute of limitations to the investigation in January 1994. The following exchange appears at pages 35-36 of the transcript:

Q: [O]ne of the issues was whether in January of 1994, one of the considerations in the mind of the people at the White House who ultimately met with Mr. Altman was an acute awareness of the fact that the statute of limitations on the RTC investigation of Madison and the Rose law Firm was going to expire at the end of February unless there was an extension, and that had a great deal of relevance to the discussions with Mr. Altman in terms of his recusal. Do you remember that being the issue that was on the table?

A: I do. I remember a number of Senators up there talking about it at great length.

Mr. Ickes thus confirmed that the statute of limitations as applied to the RTC investigation of Madison Guaranty was a relevant issue for the White House.

Second, you complained about the characterization that a private lawyer was interposed between Mr. Ickes and the White House Counsel's office. Mr. Ickes defended himself against any such charge: "I didn't have my lawyer convey it. And I was interviewed personally by Ms. Sherburne and Ms. Cheston." (Hrg., 2/22/96, p. 184). During the same testimony, however, Mr. Ickes himself used his lawyer as a shield from any knowledge about the meeting with the White House Counsel's office: "I don't know what information she conveyed. Somebody else took those notes. I wasn't present. I don't know the context." (Hrg., 2/22/96, p. 185).

Third, you complained that William Codinha, then Democratic Special Counsel to the Senate Banking Committee, did not show Mr. Ickes his notes of a February 2, 1994, meeting when Mr. Ickes was deposed on July 24, 1994. However, Mr. Ickes specifically testified that he had previously reviewed his notes (Ickes dep., 7/24/94, pp. 231-232), and Mr. Ickes reaffirmed this testimony before the Committee:

Q: Now, this is the question. I will go back to line 2. What was the content of those notes?

I have no idea, I have to look that up.

Did you review those notes before you made a production to Mr. Fiske?

Answer: I did.

Did you review those notes before the production as made here?

Answer: Yes.

Now, Mr. Ickes, you had an opportunity actually to make corrections in the deposition, didn't you?

A: As I recall, I did.

Q: Okay. And do you have reason to believe that the printed record of your answers is incorrect?

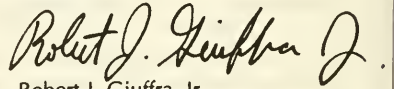
A: I'm not disputing the answer. I'm disputing the interpretation of the word.

(Hrg., 2/22/96, p. 34).

1998

It is ironic that Mr. Ickes is complaining about not seeing notes that he testified he had reviewed. As you no doubt recall, notes in Mr. Ickes' possession in 1994, long requested and subpoenaed by the Committee, were not produced until February 20, 1996.

Sincerely,

A handwritten signature in black ink, reading "Robert J. Giuffra, Jr." in a cursive script.

Robert J. Giuffra, Jr.
Chief Counsel

cc: Richard Ben-Veniste
Minority Special Counsel

Edward M. Malan
Editor

1999

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

FAX: (202) 393-8760

(202) 371-7000

DIRECT DIAL
(202) 371-7180

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
SAN FRANCISCO
WILMINGTON
—
BEIJING
BRUSSELS
BUDAPEST
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
PRAGUE
SYDNEY
TOKYO
TORONTO

April 18, 1996

BY HAND

Senator Alfonse M. D'Amato
Chairman
Senator Paul S. Sarbanes
Ranking Member
Special Whitewater Committee
United States Senate
534 Dirksen Building
Washington, D.C. 20510-6075

Re: Testimony of Harold Ickes, February 22, 1996

Dear Senator D'Amato and Senator Sarbanes:

Enclosed, per our previous correspondence, please find corrections to selected pages of the transcript of Harold Ickes' testimony of February 22, 1996. We ask that these corrections be incorporated in the official record of the Committee's proceedings.

On March 26, 1996, Chief Banking Committee Counsel Robert J. Giuffra, Jr. wrote to advise us that our letter of March 25, 1996 would also be included in the official record, which we greatly appreciate. Mr. Giuffra also took issue with several of the points we made in that letter. While we do not agree with Mr. Giuffra's responses, we do not intend at this time to replot that ground. We do, however, wish to address one new assertion that Mr. Giuffra made, namely, the suggestion that any of the documents produced by the White House on February 20, 1996 from Mr. Ickes' files should have been produced in response to the Committee's 1994 document request. We vigorously dispute this.

Senator Alfonse M. D'Amato
 Chairman
 Senator Paul S. Sarbanes
 Ranking Member
 Special Whitewater Committee
 United States Senate
 April 18, 1996
 Page 2

There appears to be a misimpression that the Committee's 1994 document request related generally to Whitewater, or to the RTC investigation or the statute of limitations, regardless of whether a communication or contact with a Treasury Department official was involved. It clearly did not. The Committee's request of June 22, 1994 specifically sought documents relating to "communications between officials of the White House and the Department of Treasury or the Resolution Trust Corporation relating to" Whitewater or Madison. This request tracked the resolution of inquiry under which the Banking Committee was operating at the time.¹

None of the new material produced from Mr. Ickes' files on February 20 related to White House-Treasury contacts. Indeed, the vast majority of the documents dated from January 1994 -- before any such contacts involving Mr. Ickes. They therefore could not, and did not, relate to communications between White House personnel and Treasury or RTC officials.²

¹ Other parts of the request, not relevant here, sought documents pertaining to the investigation into Vincent Foster's suicide and the handling of documents in his office at the time of his death.

² One document that was produced in its entirety on February 20, 1996 (#S020789) does contain a single reference to the contacts, but that reference was in fact produced to the Committee in July 1994 in a redacted version of the document. See X000533. In addition, we have recently learned that an unredacted version of this document was in fact produced to the Committee by the White House on November 2, 1995 (#S9845). Accordingly, this document was produced as appropriate, when called for by the Committee.

Senator Alfonse M. D'Amato
Chairman
Senator Paul S. Sarbanes
Ranking Member
Special Whitewater Committee
United States Senate
April 18, 1996
Page 3

To underscore that the Committee's 1994 request was limited to White House-Treasury contacts, one need look no further than comments made by then-Chairman Senator Donald Riegle, during the Committee's August 4, 1994 hearing. The issue before the Chairman at the time was the proper scope of inquiry into document #S007288-7313, the Neil Eggleston memorandum of February 28, 1994. That memorandum, as you are aware, dealt with the FDIC and RTC investigations into Madison/Whitewater, the statute of limitations, and the Rose Firm. The document was initially produced to the Committee in redacted form, because the White House concluded that those matters were not called for by the document request. At the hearing, the Committee was provided with the full document. However, the Chairman still limited questioning to the final section concerning the ramifications of Mr. Altman's February 25, 1994 recusal, and advised the witness that he should restrict his responses to only that part of the memo, as that part alone was within the Committee's charter. (See Transcript of Hearing (Aug. 4, 1994) at 310-312.) As the Chairman's comments and actions made clear, matters relating generally to the RTC investigation of Madison or generally to the statute of limitations were not at the time material to the Committee's resolution of inquiry or responsive to its document request.

Additionally, we note that the Committee did not generally request records Mr. Ickes kept of the Whitewater Response Group until February 15, 1996, even though it had been aware of their existence since Mr. Ickes' deposition in 1994. This further indicates that the Committee recognized that these documents were not, as a broad category, responsive to previous Committee requests.

Finally, as you know, the White House Counsel's office took responsibility for producing White House

Senator Alfonse M. D'Amato
 Chairman
 Senator Paul S. Sarbanes
 Ranking Member
 Special Whitewater Committee
 United States Senate
 April 18, 1996
 Page 4

documents responsive to Committee requests directed to individual White House personnel, including Mr. Ickes. In March 1994, in response to an Independent Counsel subpoena regarding White House-Treasury contacts, Mr. Ickes made a sweep of his files and turned over anything arguably responsive to both his personal counsel and to the White House Counsel's Office. The White House Counsel's staff later culled that group for documents responsive to the Committee's June 1994 request. Two of the documents produced to the Committee on February 20, 1996 -- including the January 16, 1994 notes of a meeting regarding Whitewater held in a private home -- were among those given to White House Counsel in March 1994. When the Counsel's Office undertook to respond to the Committee's June 1994 request, it evidently determined that these documents were not responsive -- a conclusion with which we would have concurred.

As Mr. Ickes explained when he testified, he deeply regrets that the documents produced in February 1996 were not provided to the Committee earlier, but his failure to do so was wholly inadvertent, and he had no intention to conceal anything from the Committee. We do not agree, however, that these documents were "long requested" or "long . . . subpoenaed by the Committee," or with the suggestion that any of these documents should have been produced in 1994.

Senator Alfonse M. D'Amato
Chairman
Senator Paul S. Sarbanes
Ranking Member
Special Whitewater Committee
United States Senate
April 18, 1996
Page 5

We ask that this letter also be made part of
the record of Committee's official proceedings.

Sincerely,


Robert S. Bennett

Enclosures

cc: Edward M. Malan, Editor

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
 PHIL GRAMM, TEXAS
 RICHARD C. SHELBY, ALABAMA
 CHRISTOPHER S. BOND, MISSOURI
 CONNIE MACK, FLORIDA
 LAUCH FAIRCLOTH, NORTH CAROLINA
 ROBERT F. BENNETT, UTAH
 ROD GRAMM, MINNESOTA
 PETE V. DOMENICI, NEW MEXICO
 PAUL S. SARBANES, MARYLAND
 CHRISTOPHER J. DODD, CONNECTICUT
 JOHN F. KERRY, MASSACHUSETTS
 RICHARD M. BRYAN, NEVADA
 BARBARA BOXER, CALIFORNIA
 CAROL MOSLEY BRAUN, ILLINOIS
 PATTY MURRAY, WASHINGTON

HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GUFFRA, JR., CHIEF COUNSEL
 PHILIP E. RECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
 COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS
 WASHINGTON, DC 20510-6075

April 22, 1996

Via Facsimile and U.S. Mail

Robert S. Bennett, Esq.
 Skadden, Arps, Slate, Meagher & Flom
 1440 New York Avenue, N.W.
 Washington, D.C. 20005

Dear Mr. Bennett:

The Special Committee to Investigate Whitewater Development Corporation and Related Matters has received your letter of April 18, 1996 to Chairman D'Amato and Senator Sarbanes regarding Mr. Harold Ickes' testimony to the Committee on February 22, 1996. As requested, your letter will be included in the record of the Special Committee's proceedings.

You requested that the Special Committee make certain corrections in the transcript of Mr. Ickes' February 22, 1996 testimony. As you know, the Special Committee's rules permit alterations of its transcripts only to correct grammatical errors, obvious errors of fact and errors in transcription. Many of your requested corrections exceed these parameters and would change substantively Mr. Ickes' testimony to the Special Committee. Accordingly, Chairman D'Amato has instructed the Special Committee's editor, Edward Malan, to make the corrections you requested on pages 67, 74, 143, 167, 182, and 259 of the transcript, but not those requested on pages 29, 30, 32, 100, and 239 of the transcript. Enclosed is Chairman D'Amato's memorandum to Mr. Malan to that effect.

In lieu of altering the transcript of Mr. Ickes' testimony on page 239, the Special Committee will take note that you have advised the Special Committee that Mr. Ickes had a White House pass that was revoked in September 1993.

Your April 16, 1996 letter states that none of the documents produced by the White House from Mr. Ickes' files on February 20, 1996 was covered by the June 22, 1994 request for documents from the Committee on Banking, Housing, and Urban Affairs. The record is to the contrary.

Robert S. Bennett, Esq.
April 22, 1996
Page 2

The Banking Committee's June 22, 1994 letter to Mr. Ickes, a copy of which is attached, requested all records, regardless of format, in Mr. Ickes' custody, control, or possession "*that relate in any manner*" to communications between the White House and the Department of the Treasury or the Resolution Trust Corporation ("RTC") concerning Whitewater Development Corporation ("Whitewater") or Madison Guaranty Savings and Loan Association ("Madison"). This request encompassed not only documents specifically referencing White House-Treasury contacts, as your letter asserts, but also records that were more generally relevant to such contacts--including records that reflect, refer, or relate to the subject matters discussed in the meetings and communications between White House and Treasury or RTC officials. Cf. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (adopting a broad interpretation of "relating to").

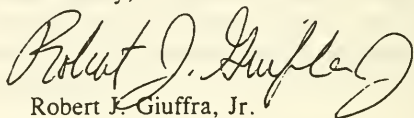
There can be little doubt that notes and documents relating to the statute of limitations governing claims brought by the RTC arising from the failure of Madison were relevant to the White House-Treasury contacts. Mr. Ickes himself acknowledged this fact when he testified to the Banking Committee on August 4, 1994. His opening statement to the Banking Committee dealt almost entirely with the statute of limitations and his state of knowledge with respect to this issue prior to and after the February 2, 1994 meeting between White House officials and Treasury and RTC officials Roger Altman and Jean Hanson. See S. Hrg. 103-889, Vol. IV, HEARINGS RELATING TO MADISON GUARANTY S&L AND THE WHITEWATER DEVELOPMENT CORPORATION--WASHINGTON, DC PHASE, pp. 353-355. Therefore, the Banking Committee's June 22, 1994 document request encompassed documents numbered S9908-S9911, produced to the Special Committee on November 2, 1995, and documents numbered S20819, S20888, S20790, produced to the Special Committee on February 20, 1996.

Finally, your April 16, 1996 letter states that the Special Committee did not request notes and records relating to the Whitewater Response Group until February 15, 1996. The record is to the contrary. On August 25, 1995, the Special Committee requested from the White House all records, in whatever format, that relate in any manner to, among other things, Whitewater and Madison. This request was repeated in the Special Committee's October 30, 1995 subpoena commanding production of all such records. Obviously, records and notes of the self-described Whitewater Response Team relate to Whitewater and Madison.

Robert S. Bennett, Esq.
April 22, 1996
Page 3

In any event, Mr. Ickes testified to the Banking Committee in 1994 that, despite having reviewed his records prior to their production to the Special Counsel and the Banking Committee, Mr. Ickes did not recall any reference to the issue of the statute of limitations in his notes. (Ickes dep., 7/24/94, pp. 231-232). The Special Committee does not, as you suggest, bear the burden of identifying specific notes that are responsive to its request and subpoena, especially given Mr. Ickes' prior testimony about such notes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert K. Giuffra, Jr.", written in dark ink.

Robert K. Giuffra, Jr.
Chief Counsel

cc: Richard Ben-Veniste
Minority Special Counsel

SENATE STAFF DIRECTORY

PAUL J. SARGENT, CHIEF OF STAFF
CHRISTOPHER J. O'NEILL, CHIEF OF STAFF
JIM LASSER, CHIEF OF STAFF
RICHARD C. SMITH, CHIEF OF STAFF
JOHN J. KELLY, CHIEF OF STAFF
RICHARD H. BRYAN, CHIEF OF STAFF
BARBARA WILES, CHIEF OF STAFF
NEW HARTHOUSE CAMPBELL, CHIEF OF STAFF
CAROL MOSLEY-BRAUN, CHIEF OF STAFF
PATTY MURRAY, CHIEF OF STAFF

ALPHONSE W. D'AMICO, CHIEF OF STAFF
PAUL L. HARRIS, CHIEF OF STAFF
CHRISTOPHER J. O'NEILL, CHIEF OF STAFF
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
ROBERT J. BISHOP, CHIEF OF STAFF
WILLIAM W. ROTH, CHIEF OF STAFF
PETE V. DOMENICI, CHIEF OF STAFF

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
HOWARD A. HARRIS, REPUBLICAN STAFF DIRECTOR

June 22, 1994

Harold Ickes

Assistant to the President and Deputy Chief of Staff
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Ickes:

On June 21, 1994, the Senate passed Senate Resolution 229, a copy of which is enclosed, directing the Committee on Banking, Housing, and Urban Affairs to conduct hearings on matters specified in the resolution.

In preparation for the hearings, we request that you provide to the Committee all records that are within your custody, control, or possession, regardless of format, that relate in any manner to the following subjects:

- (a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;
- (b) the Park Service Police investigation into the death of Vincent Foster; and
- (c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

These records should be delivered to Kelly Cordes, the Committee's Chief Clerk, 534 Dirksen Senate Office Building. As you know, Senate Resolution 229 provides that public hearings on this matter begin no later than July 29, 1994. Therefore, it is necessary that these documents be received by the Committee no later than July 1, 1994, and prior to that date, if possible. Please provide us, together with the delivery of documents, with a list of the records that you are submitting so that the Committee and you have a common list of the records supplied by you.

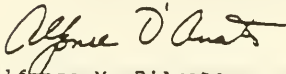
Harold Ickes
June 22, 1994
Page Two

If you at one time had records on the matters listed above, but have provided them to someone else, please advise us in writing, by July 1, 1994, to whom you provided those records and furnish us a list of the records provided.

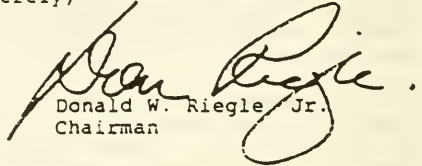
If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at 224-4435. This request is, of course, an initial request and may be supplemented by additional ones. If you will be represented in these proceedings, please advise us of the name, address, and telephone number of your counsel.

Your cooperation in this matter is greatly appreciated.

Sincerely,



Alfonse M. D'Amato
Ranking Member



Donald W. Riegle, Jr.
Chairman

Enclosure

2009

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

FAX (202) 383-8760

(202) 371-7000

DIRECT DIAL
(202) 371- 7180

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
SAN FRANCISCO
WILMINGTON
—
BEIJING
BRUSSELS
BUDAPEST
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
PRAGUE
SYDNEY
TOKYO
TORONTO

May 3, 1996

VIA FACSIMILE

Hon. Alfonse D'Amato,
Chairman
Hon. Paul Sarbanes,
Ranking Member
Special Whitewater Committee
United States Senate
534 Dirksen Building
Washington, D.C. 20510

Re: Harold Ickes' February 22, 1996 Testimony

Dear Senators D'Amato and Senator Sarbanes:

We write in response to a letter from Committee Counsel Robert J. Giuffra, Jr., transmitting a memorandum from Senator D'Amato to Edward M. Malan in which the Chairman directs Mr. Malan to refrain from making certain specified corrections in the transcript of the above-referenced testimony by our client, Harold Ickes.

We object to the Committee's refusal to include certain clarifications to Mr. Ickes' testimony, as requested by us. Mr. Giuffra asserts that the rules permit corrections only for grammatical errors, obvious errors of fact and errors in transcription, and thus certain of the changes we requested were disallowed. However, the directions provided by the Committee also permitted "minor clarifying changes. . . if they do not change the original statement." In the changes that were disallowed, no alteration was made to the substance of the original statement; in almost all cases, words were simply added to them for purposes of clarification. Accordingly, they are permitted under the rules, and we urge that they be included. If not, we would at a minimum ask that the corrections we proposed, which were attached

Hon. Alfonse D'Amato,
Chairman
Hon. Paul Sarbanes,
Ranking Member
April 23, 1996
Page 2

to our letter of April 18, 1996, be included in the record along with that letter, so that the public record at least will reflect that Mr. Ickes attempted to assure the record was accurate and complete.

In that respect, it is significant that several of the clarifications that were disallowed seek to reiterate the fact that Mr. Ickes reviewed documents in March 1994 and turned them over to counsel at that time. The clarifications are not needed to correct Mr. Ickes' responses so much as to correct misimpressions that may have been created by the way counsel framed his questions to Mr. Ickes. The Committee, moreover, has no reason to doubt that the clarifications are accurate and correct as to those facts. Accordingly, the Committee's refusal to allow these changes only gives support to those who claim that some on the Committee are engaged in a game of "gottcha," and are less concerned about accuracy and completeness.

As to Mr. Giuffra's other comments about the scope of the Committee's June 22, 1994 document request, the record, including Chairman Riegle's comments at August 4, 1994 hearing, speaks for itself. The request was reasonably understood by all at the time to be limited to documents specifically relating to White House-Treasury contacts, and we will not revisit the issue here.

Again, we ask that this letter be included in the official record of the Committee.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bob Bennett", written over the typed name.

Robert S. Bennett

cc: Edward M. Malan



20
C

454

• 4

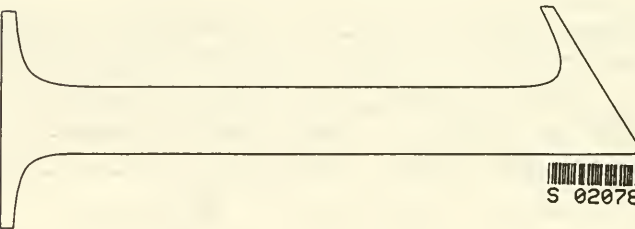
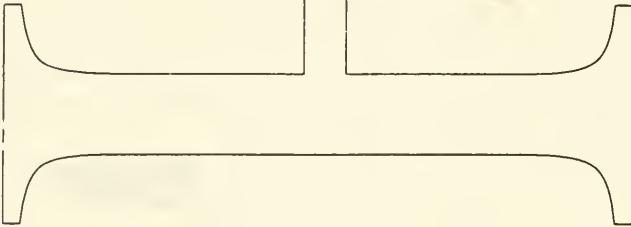
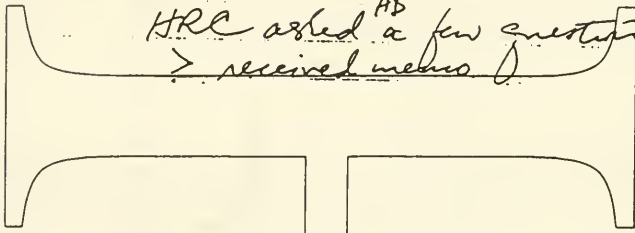
8

nt-

ת

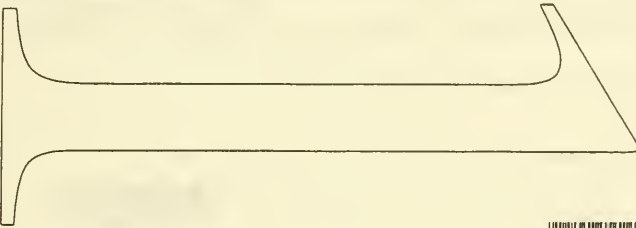
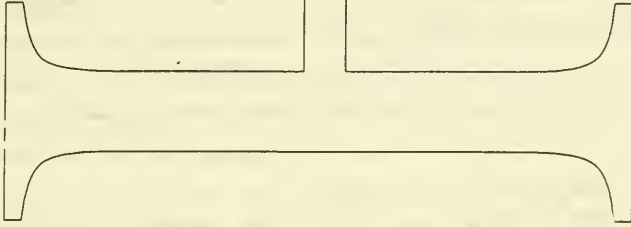
versions. Ends to HRC s/p. OR
 discussing.

HRC asked a few ^{HB} questions. Phil
 > received memo



PRODUCTION OF PAPER AND PAPER PRODUCTS
 S 020784

Reported HCL to be midway thru HCL
 with HCL source only,
 HCL w/ scrub 2' long and this was total
 before 2/3 - 24



S 020785

2/27-3/1 Memos...

Lake Feb, 2/26 or 27th, H1 - cover w/ Pres, =

asked some q's re grave den RUC; can

Ro. x., H. 16, RC to hold habeas \Rightarrow

H1 asked 10? 2- write memo.

Did w/ Pres 12 hrs.

H1 asked ^{1st} Apple 12, Arthur q's

3/1 \rightarrow H. 16 only to recall dec. w/ Pres on

sending to Pres.

attention to asking q's
why? 10.6? Assume w/ t.

S 020786

M E M O R A N D U M

TO: The First Lady C O N F I D E N T I A L

FROM: Harold Ickes

DATE: 1 March 1994

RE: Resolution Trust Corporation

Attached is a copy of W. Neil Eggleston's 28 February 1994 memorandum to me regarding certain issues involving the RTC and the Rose Law Firm ("Rose"). Attached to that memo are copies of the FDIC report, dated 17 February 1994, concerning possible conflicts of interest regarding Rose's representation of the FDIC against Madison Guaranty, and the RTC's 8 February 1994 report concerning the same subject.

It is my understanding that shortly after Roger Altman met with Bernie Nussbaum, me and others concerning the RTC statute of limitations, he received an opinion from an ethics officer of the Treasury Department that he, as the acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty. I will confirm this situation.

Please let me know if you want to discuss the attached.

1 000000 0000 0000 0000 0000 0000 0000
S 007288

the IG will adopt the broadest possible interpretation of its mandate.

2. The RTC Report.

The RTC report was released on February 25, 1994 by Senator D'Amato.

The RTC report differs in two major respects from the FDIC report. First, the RTC did not interview any Rose law firm attorneys. The RTC reviewed RTC records and interviewed RTC employees only. Second, the report is factual only. The report reached no conclusion on whether the Rose law firm had a conflict. As the report describes its scope, "This investigation focused only on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC."

The RTC concluded that Rose did not disclose either its prior representation of Madison Guaranty or Mr. Hubbell's relationship with Mr. Ward.¹ The report acknowledges, however, that within a few months of the retention, the supervisory FDIC attorney, Ms. Breslaw, was made aware of Mr. Hubbell's relationship with Mr. Ward. Ms. Breslaw determined that no conflict existed.

The RTC did not hire the Rose law firm; rather, the retention by the FDIC took place before the RTC was even in existence. Further, the RTC acknowledges in its report that it had no outside conflicts committee, nor regulations, guidance or policy on conflicts until after 1989.

The conclusion of the RTC report is that the matter was referred to the Office of the General Counsel (Ellen Kulka) for any action that it deems appropriate.²

¹ An ultimate finding that Rose had not disclosed either the prior representation of Madison Guaranty or the Ward relationship would be a finding that Mr. Hubbell was not truthful in his recollection. Mr. Hubbell told the FDIC when it was preparing its report that he advised FDIC attorneys about the prior Rose representation of Madison Guaranty and believes that he also advised the government attorneys about his relationship with Mr. Ward. Mr. Hubbell was not interviewed by the RTC attorneys during the preparation of their report.

² As noted above, the RTC report only addressed the factual issues of representation and disclosure. The report did not attempt to apply the facts to any applicable conflicts rules or regulations. It is not clear what the RTC General Counsel, Ms. Kulka, will do with the report. The RTC has an Outside Counsel's (continued...)

At the hearing, Mr. Altman agreed to refer the RTC report to the RTC IG for review.

What sanction could be imposed if the FDIC/RTC finds that the Rose law firm had a conflict of interest or an appearance of a conflict in handling the Frost & Co. litigation in 1989 and failed to disclose that conflict?

As noted above, it is not clear whether the FDIC or the RTC will review this matter under an actual conflict standard or an appearance of a conflict standard. It would seem that to impose any sanction, the IG would have to decide that the Rose firm violated a duty that was in existence at the time, not a duty that later became more strict.

The most severe sanction that would likely flow from a finding that the Rose law firm had a duty to disclose its prior representation of Madison Guaranty and its relationship with Mr. Ward and that it breached that duty would be that the Rose law firm would be permanently barred from any further work for the RTC or the FDIC (and possibly other banking regulators). Lesser sanctions imposed by the regulatory agencies might also be possible, such as a temporary bar.

Under the facts as we now understand them, it would seem quite unlikely that the RTC could bring a civil action against the Rose firm or any of its attorneys for failure to disclose the conflict. To prevail, the RTC would have to show fraud or intentional misconduct that caused substantial loss to the institution or unjust enrichment to the Rose firm. The RTC could only really show fraud or intentional misconduct if it could demonstrate that the Rose law firm "threw" the Frost & Co. litigation because of its prior representation of Madison Guaranty. *→ How did we get this info? Any with Treas*

Criminal liability for the Rose firm would seem even more remote. To prevail, the Special Counsel would have to show that Rose acted with intent to defraud the savings and loan or wilfully made false statements to the FDIC/RTC through its failure to disclose the conflict.

What civil matters is the RTC investigating, who can it sue, and why didn't we hear anything about a civil investigation until late 1993?

²(...continued)

Conflicts Committee to which she could refer the report. She could presumably also refer the report with a recommendation to the RTC Acting CEO Jack Ryan for action.

The RTC is investigating whether it has a civil tort action against anyone who caused a loss to Madison Guaranty. This would include insiders such as James and Susan McDougal and members of the Board of Madison. It also includes professionals who provided service to Madison Guaranty, such as the Rose law firm, other law firms, and accounting firms. The Frost & Co. suit is an example of a suit against a professional service provider that caused loss to Madison Guaranty through a negligent audit. The RTC could also sue outsiders, including the President and Mrs. Clinton, if the RTC found that the outsiders worked with insiders illegally to divert assets of the savings and loan. For example, if the RTC believed that the Clinton campaign knowingly received diverted Madison assets at the April 1985 fundraiser or that the Clintons knowingly received other diverted Madison Guaranty assets through Whitewater, it could bring suit. The RTC commonly sues the recipient of a loan where it has information that the borrower knew that the loan was improper.

Under the legislation creating the RTC in 1989, the RTC as conservator of a failed savings and loan had to bring a tort claim within three years of the time the RTC (or FDIC as predecessor) took over the institution. The FDIC took over Madison Guaranty on February 28, 1989. Thus, all torts had to be brought by February 28, 1992. That day passed during the campaign.

The Resolution Trust Corporation Completion Act, signed by the President on December 17, 1993, ~~revived the possibility of a civil action.~~ Under that legislation, a narrow class of torts--those that were fraudulent or involved intentional misconduct and that either caused substantial loss to the institution or unjust enrichment to the defendant--were revived. The statute extended the limitations period such that this category of tort could be brought within five years of the time the RTC took over the institution.¹ Moreover, the statute specifically provided that the five year period would apply even if the three year limitations period had already run.¹

¹ I am unaware of any civil suits brought by the RTC prior to February 28, 1992, but I would not be surprised if it had sued McDougal and other insiders. McDougal was indicted in 1989 for bank fraud involving Madison Guaranty, and was acquitted in 1990. It would be fairly common for the RTC to pursue a civil action even after an acquittal.

¹ Torts based on negligence are still covered by the three year statute of limitations.

¹ The statute of limitations for crimes involving financial institutions is 10 years from the date the illegal conduct occurred, regardless of when the RTC took over the institution.

As a result, the RTC would not have been looking into a possible civil suit involving Madison Guaranty after February 1992 and before the passage of the statute last fall. In late 1993 and early 1994, Senator D'Amato and Rep. Leach recognized that the legislation had revived the possibility of an RTC lawsuit in the Madison matter. Both took to the floor of their respective chambers, aggressively urging the RTC to commence an action before the statute expired. In early 1994, the RTC--then faced with a statute of limitations that would run by the end of February--hired the San Francisco-based law firm of Pillsbury, Madison and Sutro to assist it in determining whether to bring any civil actions arising out of Madison.'

In February 1994, the statute of limitations was extended once again, through the life of the RTC, which is expected to expire on December 31, 1995.

Now that Mr. Altman as Acting CEO of the RTC has recused himself from further involvement in Madison Guaranty matters, who at the RTC will be the decision-maker on whether to bring a civil action arising out of the failure of Madison Guaranty?

Following his testimony before the Senate Banking Committee on Thursday, Mr. Altman recused himself as Acting CEO of the RTC from any further involvement in Madison Guaranty/Whitewater matters.

' The partner at Pillsbury assigned to this matter is Jay Stephens, a Republican who was a member of the Reagan and Bush administrations. From 1981 to April 1986, Mr. Stephens was a political appointee at the Justice Department. By 1986, he had become Associate Deputy Attorney General. From April 1986 through March 1988, he was Deputy Counsel to the President. In that capacity, he had a role in the Iran/Contra Affair. After published reports that Oliver North had shredded documents, Mr. Stephens called Fawn Hall. When she denied (falsely) that any improper shredding had taken place, Mr. Stephens accepted her denial, and the White House issued a statement denying the shredding.

In March 1988, President Reagan appointed Mr. Stephens to be U.S. Attorney for the District of Columbia. When President Clinton sought the removal of all U.S. Attorneys in April 1993, Mr. Stephens called a press conference at which he suggested that the President was acting to frustrate the investigation of Rep. Rostenkowski. At the time, Senator Dole called for hearings into what he termed the "March massacre." Until January 1994, Mr. Stephens had been considering running for the Senate.

The top official at the RTC who will be making these decisions on Madison Guaranty is Jack Ryan. Mr. Ryan was formerly with the Office of Thrift Supervision. He is a career official. His principal advisor will be Ellen Kulka, now General Counsel of the RTC, who also came from OTS. Ms. Kulka is also a career official.

We intend to nominate a person for the position of CEO of the RTC within the next few weeks. We can anticipate that any person the President nominates will be pressured to recuse from any Madison-related matters. If the person refuses to recuse and is confirmed, then that person will become the decision maker. If that person is forced to recuse to achieve confirmation, then Jack Ryan would remain the decision-maker on Madison matters at the RTC.

W.N.E.

5 007293

FDICFederal Deposit Insurance Corporation
Washington, DC 20429

General Counsel

February 17, 1994

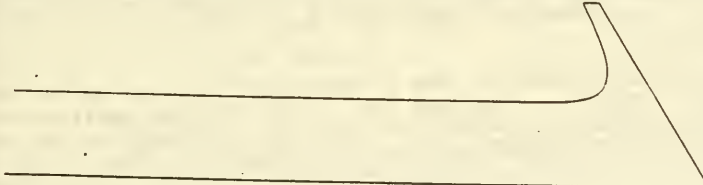

MEMORANDUM TO: Chairman Howe

FROM: Douglas H. Jones *Doug H. Jones*
Acting General Counsel

SUBJECT: Report on the Retention of the Rose Law Firm

As you requested, we have reviewed the FDIC's 1989 retention of the Rose Law Firm with respect to Madison Guaranty Savings and Loan. ~~Attached is a report on our review and findings.~~ As you can see from the report, we found no basis to conclude that the retention involved a conflict of interest by the law firm. Accordingly, we are not recommending any sanctions against the firm.

Attachment

S 007294

000018



S 007295

February 17, 1994

**LEGAL DIVISION REPORT ON THE RETENTION OF THE ROSE LAW FIRM
FOR THE MADISON GUARANTY SAVINGS AND LOAN CONSERVATORSHIP**

The purpose of this report is to review the facts and circumstances surrounding the retention of the Rose Law Firm (the "Firm") for the representation of the conservatorship of Madison Guaranty Savings & Loan (the "Conservatorship" and the "S&L", respectively) in litigation against the Frost & Co. ("Frost") accounting firm. It explores (1) whether the Firm's prior representation of the S&L before the Arkansas Securities Commissioner constituted a conflict of interest; (2) whether the litigation against the Conservatorship by the father-in-law of the Firm partner in charge of the Frost litigation was a conflict of interest; and (3) whether any action against the Firm is warranted.

Assertions have been made that the Firm had conflicts of interest that should have prohibited it from representing the Conservatorship and the FDIC in the Frost litigation. We have reviewed the time period in which the FDIC was responsible for managing the Conservatorship (from February 28, 1989 through August 9, 1989, when the Resolution Trust Corporation was established) to determine the facts related to the Firm's retention. As a part of our review, we looked at all relevant internal FDIC and RTC materials from that time, reviewed relevant materials identified by the Firm, and interviewed each of the participants and others who were involved with the Conservatorship.

As detailed below, based on the information available to us, we have found no basis to conclude that under the then applicable rules either situation involved a conflict of interest. Accordingly, we recommend no sanctions against the Firm.

Background

On February 7, 1989, the FDIC entered into an agreement with the Federal Savings and Loan Insurance Corporation ("FSLIC") to act as agent for the FSLIC in any receivership or conservatorship appointed for an insured savings association after January 1, 1989. On February 28, 1989, FSLIC was appointed conservator for the Madison Guaranty Savings & Loan. Pursuant to the agreement with the FSLIC, the FDIC was appointed the managing agent for the Conservatorship. In that role, the FDIC was required to marshal the institution's assets and pursue all claims by and defend those against the S&L. Among the litigation existing at the S&L at that time was a suit against the institution's former auditor, Frost & Co. As managing agent, it was the FDIC's responsibility

000019



- 2 -

to determine whether that suit had any value and, if so, to continue the pursuit of the action. The FDIC's formal role ended on August 9, 1989, with the creation of the RTC, whose function was to serve as receiver or conservator for any S&L closed after January 1, 1989.

The Firm's Prior Representation

In 1985, the Firm represented the S&L before the Arkansas Securities Commissioner on two matters: a plan to issue a \$3 million private placement of preferred stock in the S&L, on which the Commissioner was asked to issue an opinion; and an application by which the S&L, assuming it raised the capital, sought to set up a service corporation that would become a wholly-owned broker dealer of securities. The opinion was issued on May 14, 1985 and the Commissioner approved the service corporation on September 20, 1985, although placing a condition on the approval that the S&L must raise the capital by December 31, 1985. The capital was never raised and the plan was not implemented. There were no communications between the Commissioner's staff and the Firm after 1985 with respect to the securities placement or the plan.

Part of the submission in support of these two applications was an audit of the financial statements of the S&L performed by Frost for calendar year 1984. Certain adjustments to these financial statements were questioned by the Commissioner's office. The records of the Commissioner's office show that the effect of those adjustments was explained in letters from Frost and John Lathan, the S&L's chief executive officer, attached to a letter from the Firm on July 25, 1985. There is no indication that the Firm retained the auditor, assisted in any way in the audit or took any position as to the quality of the audit.

In 1988, the S&L initiated litigation against Frost charging that the auditor had been negligent, reckless and breached its contract by failing to fairly represent the S&L's financial condition in the 1984 and 1985 audits. The S&L was represented in the litigation by the law firm of Gerrish and McCreehy.

The Gerrish firm also was involved in defending directors and officers of failed banks in actions instituted by the FDIC. After FDIC was appointed managing agent of the Conservatorship, the FDIC staff attorney responsible for the Frost litigation concluded that, pursuant to FDIC policy, the firm had a conflict

The FDIC's Legal Division continued to provide legal support to the RTC with staff dedicated to RTC legal matters until September 1991, when all RTC legal matters were assumed by a newly created Legal Division within the RTC comprised of the FDIC staff formerly dedicated to RTC work.


 S 007297

- 3 -

of interest with the FDIC and had to be replaced. The staff attorney also concluded that few firms in Arkansas had the experience and capacity to do accounting malpractice work, which is considered to be complex in nature. The staff attorney first considered the Arkansas law firm of Wright, Lindsey & Jennings, which had represented FDIC in other matters, but it too had a conflict of interest. The staff attorney then contacted the Rose firm based on previous work done by the firm on behalf of the FDIC in connection with the Corning Bank failure.¹

The staff attorney contacted a partner of the firm (based on the staff attorney's recollection, probably Webster Hubbell) and asked the firm to take over representation. The staff attorney is sure the firm would have been asked about any conflicts of interest, but due to the passage of time has no specific recollection of making that request or any response that may have been made. Richard Donovan, a partner with the firm who worked on the case, states that he recalls Mr. Hubbell having advised the staff attorney of prior representation of the S&L on a matter involving the Arkansas Securities Commissioner. Mr. Hubbell's recollection differs. He recalls advising the staff attorney very generally that the firm had done a small amount of work for the S&L years earlier, but that he did not view that as amounting to a conflict. He believes the work he was aware of was lending and collection work. He says he does not believe he was aware of the earlier securities work at that time, so he does not believe he discussed it with the staff attorney then. The FDIC staff attorney has no recollection of the issue being raised and says that if it had been it would have been discussed with the attorney's supervisor. The supervisor has no recollection of the issue being raised.

¹ While the firm had sent a letter to the FDIC dated February 28, 1989, soliciting work relating to any S&L failures, it does not appear the staff attorney was aware of that letter or that it influenced her decision to ask the firm to represent the FDIC. Also, assertions have been made that the letter may have been deceptive and misled the FDIC regarding prior representation because it stated "the firm does not represent any savings and loan association in state or federal regulatory matters." However, the letter also states "[f]rom time to time we have provided specialized service to some savings and loan associations in such areas as employment discrimination, work-out of participation loans and bankruptcy." The firm also acknowledged in the letter that there may be individual transactions or situations where a conflict of interest could arise.

000021



S 007298

- 4 -

The Existence of a Suit Involving Mr. Rubbell's Family

At the time the conservator was appointed (and when the firm was retained), Mr. Rubbell's father-in-law, Seth Ward, Sr., was involved in litigation with the S&L. Mr. Rubbell's father-in-law had obtained a judgment of roughly \$470,000 for commissions allegedly owed him by the S&L for the sale of real estate on behalf of Madison Financial Corporation, a subsidiary of the S&L. That case was then on appeal.

Mr. Rubbell says he was aware of the Ward litigation but he did not view it as a conflict. He says he believes he did advise the staff attorney about it, but he cannot be certain. The staff attorney does not recall whether the Ward relationship was raised at the time of the firm's retention in March of 1989. However, another FDIC staff attorney became aware of the relationship and informed the staff attorney on the case, in a letter dated June 8, 1989. At that time, the second staff attorney expressed concern that Mr. Rubbell would have access to information through his representation that could be damaging to the litigation involving Mr. Ward. After reviewing the facts, the staff attorney responsible for the Frost litigation concluded that the facts did not pose a conflict. On June 23, 1989, the staff attorney wrote to the FDIC's Managing Agent for the Conservatorship concerning the Rubbell/Ward relationship, stating that Mr. Rubbell had not represented Mr. Ward in the past and he would not do so in the future.³ Mr. Rubbell then sent a letter to the FDIC Managing Agent, dated June 28, 1989, in which he affirmed that he had not and would not in the future represent Mr. Ward in the dispute with the S&L.⁴ Mr. Rubbell also confirmed in an interview that he had not drafted any documents that were involved in the Ward litigation.

³ The staff attorney's letter also noted that the primary attorney in the case was Richard Donovan, not Mr. Rubbell, and stated that Mr. Rubbell was involved only in an indirect way. Based on discussions with the staff attorney, this was meant to indicate that Mr. Donovan, as the junior partner on the case, would do most of the day-to-day work. Based on fee bills for the case, Mr. Rubbell performed a significant amount of work.

⁴ The issue was raised again after Mr. Rubbell's letter when an FDIC credit specialist sent a memorandum to his supervisor expressing concern about the relationship and seeking senior level review of the situation. This memorandum also was called to the attention of the FDIC's Regional Counsel indicating that this should be "a Washington issue" because the staff attorney responsible for the Frost litigation was based in Washington, D.C. No further action appears to have resulted from these subsequent memoranda.

000011


 S 007299

- 6 -

As an added precaution, according to Mr. Hubbell, Mr. Donovan and Gary Speed, another partner at the firm who worked on the Frost case, the firm imposed an informal, unwritten procedure in connection with the Frost litigation that kept Mr. Hubbell from having access to information about his father-in-law. According to Messrs. Donovan and Hubbell, Mr. Hubbell was not allowed access to material such as an investigative report done by the S&L's prior attorneys, and he was kept out of several depositions when information concerning Mr. Ward's loans was expected to be involved. Mr. Speed states that Mr. Hubbell would leave the room if Mr. Ward's name came up during discussions, and that he and Mr. Donovan would not discuss Mr. Ward in the presence of Mr. Hubbell.

Analysis

Criteria for Determining Whether a Conflict Exists

The standards governing the professional conduct of attorneys, including issues relating to actual and potential conflicts of interest, are set forth in codes or rules of professional responsibility and conduct adopted by the various states. Many states have adopted, or have patterned their rules on, the American Bar Association's Model Rules of Professional Conduct ("the Model Rules"). Arkansas adopted the Model Rules as its rules of conduct for attorneys in 1985. The Model Rules generally prohibit an attorney from representing a client where the attorney also represents or previously represented another client whose interests are adverse to the first client. The Model Rules provide that a client may waive a conflict of interest by consenting to the representation after consultation with the attorney and provided the attorney reasonably believes the representation will not adversely affect the relationship with the other client. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7. Under the Model Rules, and all the state rules of which we are aware, it is the attorney, not the client, who has the primary responsibility to identify conflicts of interest when approached with a request to represent a client with respect to a new matter.⁵

⁵ Notwithstanding that the responsibility to identify any potential conflicts rests principally with the attorney, in 1990 the FDIC Legal Division adopted comprehensive policies and procedures governing the retention of law firms and the waiver of actual or potential conflicts of interest. In 1989, the FDIC's conflicts procedures, however, were less formal. Prior to their retention, firms generally were required to respond to a series of questions regarding past and current representations. Unfortunately, in early 1989, due to the tremendous increase in workload as a result of the FDIC's added FSLIC responsibilities,

The relevant provisions under the Arkansas rules of professional conduct provide that:

"A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation"; and

"A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation."

The Firm's Prior Representation

The information regarding whether the Firm disclosed that it had represented the S&L on the prior securities matter is unclear. The more important question, however, is whether a conflict of interest existed that should have been disclosed before the firm agreed to represent the conservator.

In essence, the Firm represented the S&L's interests before the Securities Commissioner in 1985 and it was representing the S&L's interests (on behalf of the S&L's conservator) in 1989. Previous representation of an institution by itself does not create a conflict when a subsequent conservator is appointed for the institution. There is no indication in the records, or based on our review, that the Firm did anything more with respect to the audit in question than take it at face value in its representation in 1985. There did not appear to be any divergence of interest between their representation in 1985 and 1989. As a consequence, the Firm's representation in 1985 was not "directly adverse" to its representation of the Conservatorship in 1989.

In addition, we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence. The Firm did not serve as general counsel or exclusive or frequent counsel for the S&L. In addition, no member of the Firm served in any senior managerial or directorial

such inquiries were not always documented. In this instance, there are no documents showing what inquiry was made of the Firm.

000024
S 007300



S 007301

- 7 -

relationship with the S&L prior to its failure.

Under the Model Rules, disclosure of prior representation such as involved here may not be required. However, where a firm is aware of such a prior relationship, we would expect it to convey that information to our staff to assist in determining whether to retain the firm. It is not clear whether the information was conveyed to the FDIC staff at the time. However, based on our review, we do not believe the prior representation represented a conflict of interest.

The Existence of a Suit Involving Mr. Hubbell's Family

It is uncertain whether the Hubbell/Ward relationship was disclosed at the time of retention. Nevertheless, it was clearly discussed within three months after retention and the staff attorney concluded there was no conflict. That assessment appears to be correct.

Mr. Hubbell had not represented Mr. Ward so there was no conflict of representation directly adverse to the Conservatorship. Also, Mr. Hubbell's representation of the FDIC did not appear to have any effect on Mr. Ward. Under Arkansas rules, unless Mr. Hubbell's representation of the Conservatorship would be "materially limited" by his "responsibilities to" his father-in-law or his own personal interests, no disclosure was required. Also, FDIC procedures, at that time, would not have required the disclosure of the relationship.

While concern was expressed by some FDIC staff shortly after the firm's retention that Mr. Hubbell would have access to information that could benefit his father-in-law, there is no indication any such information was transferred. Moreover, Arkansas rules of professional conduct (as do all state rules of conduct) prohibit an attorney from revealing information relating to representation of a client, unless the client consents after consultation. As a precaution, the firm apparently imposed its own informal "firewall" to prevent information regarding Mr. Ward from being passed on to Mr. Hubbell. Also, the FDIC's procedures at that time did not require disclosure of a relationship such as existed with respect to Mr. Hubbell and his father-in-law.

Therefore, no actual conflict appears to have existed. While in this case it is unclear whether advance disclosure was made and there was no requirement that Mr. Hubbell's relationship be disclosed, we want to emphasize that on an issue as subjective as this, we believe the better course would have been for the attorney to make clear and full disclosure in writing to the FDIC and let the FDIC as client determine whether in its judgment the representation at issue was likely to affect its interests.

- 2 -

adversely.⁶ Nevertheless, that was not specifically required at the time and, when disclosure was made, the FDIC determined the representation was not adverse.

Conclusion

In 1989, the Legal Division lacked formal procedures regarding the determination of conflicts of interest and, at the same time, the Division's staff was experiencing an enormous increase in workload due to the rapidly expanding duties of the FDIC. As a consequence, in hindsight documentation regarding the retention of the firm is more limited than would be ideally hoped for. However, based on our review, we have found no basis to determine that either of the alleged instances involved a conflict of interest.

Therefore, we see no basis to recommend any sanctions against the firm.



S 007302

⁶ In 1990, the FDIC adopted formal procedures to deal with conflicts which emphasized that waivers must be sought even where there is only the "appearance" of a conflict. Also, in 1990, the supreme court of Arkansas recognized that although the "appearance of impropriety" is no longer specifically a part of the state's rules of professional conduct the principle is still a part of the rules. First American Carriers, Inc. v. Kroger Co., 302 Ark. 46, 787 S.W.2d 669 (1990).



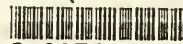
RESOLUTION TRUST CORPORATION

Resolving The Crisis
Restoring The Confidence

OFFICE OF CONTRACTOR OVERSIGHT AND SURVEILLANCE

INQUIRIES AND INVESTIGATIONS BRANCH

ROSE LAW FIRM
RTC/OCOS - T94002-WA


S 007303

February 8, 1994

00002

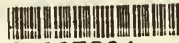
ROSE LAW FIRM
OCCS FILE NUMBER: T94001-WA

Table of Contents

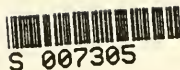
Pa

I.	Background	
II.	Rose Law Firm Representation of Madison Savings & Loan	
III.	Rose Law Firm Representation of FDIC/RTC	
IV.	Possible Conflicts	
V.	Disclosures by Rose Law Firm	
VI.	Summary	
VII.	Disposition of the Report	

Attachments



S 007304



ROSE LAW FIRM
OCOS FILE NUMBER: T94002-WX

I. BACKGROUND:

This investigation was initiated based on accounts in The Washington Times and The Washington Post concerning a possible conflict of interest involving the Rose Law Firm (Rose), Little Rock, Arkansas.

Alleged Conflict:

1. In 1984 and 1985, Rose represented Madison Guaranty Savings and Loan Association (Madison) before the Arkansas Securities Commissioner. In its representation of Madison, the law firm presented and relied upon an audit report issued by Frost & Company (Frost) on Madison. The law firm represented Madison in its attempt to obtain authorization from the Commissioner to issue a class of preferred stock and to engage brokerage activities.

2. In 1987, after the failure of Madison, the Federal Deposit Insurance Corporation (FDIC) hired Rose to sue Frost for accounting malpractice in auditing the Madison books in 1984 and 1985. The Frost audit was the same one previously used by Rose in making a case for Madison before the Arkansas Securities Commissioner in 1985.

Scope of the Investigation: This investigation focused on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC. Interviews of current or former Rose Law Firm attorneys who may be knowledgeable of this matter were not conducted.

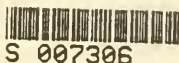
II. ROSE LAW FIRM'S REPRESENTATION OF MADISON SAVINGS & LOAN:

Charles F. Handley, Financial Examiner Supervisor, Arkansas Securities Department, provided documentation that established that Rose did represent Madison before the Department during 1984 and 1985:

1. Attachment 1 is a copy of a letter from the law firm, dated April 30, 1985, to Mr. Handley. The letter identified Hillary Rodham Clinton or Richard Massey as the first point of contact for further information.

2. Attachment 2 is a copy of a handwritten memorandum dated May 6, 1985, addressed to "Brady." The unknown author of the memorandum instructed "Brady" to "please review and draft response to Hillary."

3. Attachment 3 is a copy of an office routing slip dated May 6, 1985, from "Charles" referring to an April 30, 1985, letter.



S 007306

Rose Law Firm
Page 2

letter from the firm setting forth Madison's plan to issue preferred stock and a legal opinion that Madison could issue such stock. The author expressed doubt that Madison could enter into such a business practice.

4. Attachment 4 is a letter, dated May 14, 1985, from Beverly Bassett, Savings and Loan Supervisor, to Ms. Clinton, relevant to the authorization and issuance of a class of preferred stock by Madison. Ms. Bassett's letter stated she agreed with Ms. Clinton's conclusion that Arkansas law expressed state chartered associations the power to authorize and issue preferred stock.

5. Attachment 5 is a letter, dated July 10, 1985, from Mr. Massey, Rose, to various officials of the Arkansas Securities Commission, relevant to Madison's application to engage in brokerage activities. Mr. Massey stated in his letter that either he or Ms. Clinton could be contacted if there were any questions.

6. Attachment 6 is a memorandum, dated July 17, 1985, from Mr. Handley to Ms. Bassett and Nancy Jones regarding Madison's application to form a second-tier, wholly-owned corporation, to engage in securities broker-dealer business. Mr. Handley expressed his concern about adjustments made to Madison's net worth by Madison's accountants in the December 1984 audited financial statement.

7. Attachment 7 is a letter, dated July 23, 1985, from Mr. Massey to various officials of the Arkansas Savings & Loan Supervisory Board, relevant to Madison's application to engage in brokerage activities. The letter essentially disagreed with Mr. Handley's previous letter of July 17, 1985.

SUMMARY: Rose did represent Madison prior to the failure of the savings and loan.

III. ROSE LAW FIRM REPRESENTATION OF THE FDIC/RTC:

A. April A. Breslaw, Attorney, Professional Liability Section, RTC, Washington, D.C., provided information and documentation to support that Rose did represent the FDIC/RTC Madison against Frost.

1. In 1988, Madison filed an accounting malpractice lawsuit against Frost. In 1989, Madison went into conservatorship. At that time, Ms. Breslaw, Attorney, FDIC Directors and Officers Liability Section, replaced Madison's counsel with Rose. The law firm was retained to continue pursuing the accountant malpractice suit against Frost (Attachments 8 and 9).

Rose Law Firm
Page 3

5 007307

2. Ms. Breslaw stated that the lawsuit filed by Rose on behalf of the FDIC (and subsequently the RTC) and Madison centered on the fact that Frost, during their 1984-1985 audit, failed to detect that Madison was insolvent (Attachment 10).

3. Ms. Breslaw stated that the case was settled in 1991 for \$1,025,000 (Attachment 10).

4. Ms. Breslaw provided several of the law firm's billings to FDIC/RTC for its representation in the matter of FDIC/RTC v. Frost & Company and Madison Guaranty Savings and Loan Association (Attachment 11).

5. Further, Ms. Breslaw obtained written confirmation from Rose that the firm billed the FDIC/RTC for a total of \$400,879.55 in the matter FDIC/RTC v. Frost & Company and Madison Guaranty Savings and Loan Association (Attachment 12).

8. In addition to Madison, Rose represented and continues to represent the RTC in legal matters involving institutions other than Madison (Attachment 13).

SUMMARY: Rose represented the FDIC and the RTC. In one particular matter, the firm pursued a malpractice suit against Frost for negligence in determining the true financial condition of the Madison during its audit of the institution.

IV. POSSIBLE CONFLICTS:

A. Frost Matter: Rose represented Madison before the Arkansas Securities Department. That representation involved S&L's attempts to obtain authorization to issue preferred stock and to engage in brokerage services. The firm utilized the Frost audit of Madison's condition to support the request for authorization.

1. Later, Rose was retained by the FDIC (and subsequently the RTC) to pursue an accountant malpractice suit against Frost. The particular issue of the suit was the defective audit which failed to detect that Madison was insolvent.

B. Ward Matters:

1. In 1989, all files pertaining to the accountant malpractice suit filed against Frost and Company were delivered to Rose, specifically Webb Hubbell, a staff attorney (Attachment 14).

2. Mr. Hubbell is the son-in-law of Seth Ward, a Madison "insider", who obtained a judgement against Madison

Rose Law Firm
Page 4

S 007308

approximately \$177,000 in 1989. Mr. Hubbell was present at trial of the Seth Ward matter and appeared to have been an interested (indirectly) participant in the Ward proceedings (Attachment 15).

3. The judgement was appealed by the FDIC. Sue Strayhorn, FDIC Litigation Coordinator for Madison, advised that if a new trial was granted, information contained in the Frost audit files (of which Mr. Hubbell had knowledge) could be damaging to the FDIC case against Mr. Hubbell's father-in-law. Ms. Strayhorn brought this to the attention of Paul Jeddalo, FDIC Staff Attorney, in order to make him aware of the situation (Attachment 15).

4. This possible conflict was also raised by Ken Schneck, Madison's Credit Specialist. In addition to the Seth Ward matter, Mr. Schneck also stated that Mr. Hubbell's brother-in-law, Seth Ward II, had also filed suit against Madison. Mr. Schneck stated that during the course of the Frost suit, practices and procedures used in Madison's day-to-day operations would surely be examined. As such, Mr. Hubbell would be privy to this detailed information. Mr. Schneck suggested that it would be naive to think none of this information would be revealed to Mr. Hubbell's family (Attachment 15).

5. Ms. Breslaw responded to the concerns of Mr. Jeddalo, Ms. Strayhorn, and Mr. Schneck. On June 23, 1990, in a letter to David Paulson, Managing Agent, Madison, she informed him of nothing to warrant taking the Frost matter away from Rose (Attachment 17).

SUMMARY: Based on the information obtained to date, none of the above two matters were disclosed by Rose. (See Section below for further disclosure discussion.) The matter involving Seth Ward was brought to the attention of the staff attorney Madison, April Breslaw, by FDIC attorneys. Ms. Breslaw subsequently determined that no conflict existed. It should be noted that at this time, 1989, there was no Outside Conflict Committee and there were no regulations, policy, or guidance regarding conflict matters. The process, according to Ms. Breslaw, was that informal and situations were handled as they came to the attention of the staff attorney who handled that particular institution.

V. DISCLOSURES MADE BY THE ROSE LAW FIRM:

A. On October 3, 1990, Mr. Hubbell executed a Legal Services Agreement on behalf of Rose with the FDIC. Mr. Hubbell certified that, as part of its agreement with the FDIC, the firm would update any conflicts information in its annual report

000032

Rose Law Firm
Page 3

S 007309

~~the FDIC. No disclosures were made by Rose at this time (Attachment 13).~~

B. On August 24, 1992, Mr. Hubbell, in a letter to the RTC provided detailed information on Rose. Mr. Hubbell stated that the firm's prior representation of the FDIC/RTC included Madison Guaranty Savings & Loan. No disclosure was made that the firm represented Madison prior to FDIC/RTC involvement.

1. In his letter, Mr. Hubbell disclosed an unrelated conflict involving a former member's alleged conflict of interest in acting as both borrower and attorney in connection with his personal credit arrangements at FirstSouth. The claim was subsequently settled and the member withdrew from the firm in March 1988.

2. Attached to Mr. Hubbell's letter was an RTC Fitness and Integrity Certification which fully disclosed details of the conflict involving the former member of the firm (Attachment 1).

C. On December 1, 1992, Mr. Hubbell executed a Legal Services Agreement with the RTC and stated the firm had no conflicts of interest with the RTC or FDIC (Attachment 20).

D. Ms. Breslaw, formerly FDIC and currently with the RTC advised that she has no recollection that the Rose Law Firm verbally disclosed to her its prior representation of Madison. Ms. Breslaw further stated she had no documentation regarding conversation wherein Mr. Hubbell told her about the firm's prior representation of Madison (Attachment 21).

SUMMARY: Rose disclosed one conflict of interest which is unrelated to the Frost or Ward matters. No documentation was found regarding a disclosure of either the Frost or the Ward matters.

VII. SUMMARY:

A. Rose represented Madison prior to its failure. In one particular matter, the firm represented Madison before the Arkansas Securities Department in the S&L's attempt to obtain authorization to issue stock and engage in brokerage activities. The firm's representation relied upon the Frost audit report.

B. Rose represented the FDIC/RTC subsequent to the fail of Madison. In one particular matter, the firm was retained pursue an accountant malpractice suit against Frost for failure to detect the insolvency of Madison.

C. Rose did not disclose its representation of Madison before the Arkansas Securities Department to the FDIC/RTC.

THE WHITE HOUSE
WASHINGTON


S 007310

(revised)

February 28, 1994

MEMORANDUM FOR HAROLD ICKES
DEPUTY CHIEF OF STAFF

FROM: W. NEIL EGGLESTON
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: WHITEWATER--FDIC AND RTC ROSE LAW FIRM ISSUES

The recent release of the FDIC and RTC reports addressing the possible conflict of interest of the Rose law firm in its representation of Madison Guaranty raises a number of issues.

~~What did the FDIC and RTC conclude, and why does it seem that their conclusions are inconsistent?~~

1. The FDIC Report.

The FDIC report was released on or about February 17, 1994. It was drafted by the Legal Division of the FDIC, and presented to FDIC Acting Chairman Hove, a Republican.

Frost & Co. was Madison Guaranty's accounting firm in 1984 and 1985. In that capacity, it prepared certain audited financial reports for Madison. The Rose firm used the 1985 audited financial statement in connection with its representation of Madison Guaranty before the Arkansas Securities Commission.

~~Madison Guaranty sued Frost & Co. in 1988 for the negligent preparation of financial statements. At the time, Madison was represented by the Gerrish firm. McDougal had been forced out of the management of Madison in the summer of 1986. When the FDIC took over Madison Guaranty in February 1989, it determined that the Gerrish firm had a conflict. In March 1989, the FDIC therefore replaced the Gerrish firm with the Rose law firm.~~

The FDIC report reviewed the time period in which the FDIC was responsible for the conservatorship of Madison Guaranty, from February 28, 1989 to August 9, 1989 (when the RTC was created and took over the conservatorship of failed savings and loans). The FDIC was thus the entity that retained the Rose law

firm to pursue the Frost & Co. litigation. The FDIC report reviewed relevant FDIC and RTC documents and interviewed participants, including FDIC and RTC employees and Rose law firm lawyers.

On the factual issue of whether the Rose law firm had disclosed to the FDIC its prior representation of Madison Guaranty, ~~the FDIC concluded that the record was unclear.~~ The report nevertheless concluded that no conflict existed between the Rose law firm's prior representation of Madison Guaranty and its representation of the FDIC in the Frost & Co. litigation. The report concluded that the firm's representation in 1985 was not "directly adverse" to the representation in 1989.

The FDIC based its conclusion on two grounds. First, it stated that there was no evidence that the firm had any involvement in the creation of the Frost & Co. audit report that became the subject of the 1989 litigation. Second, it stated "we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence." ~~This was one of the sentences that Senator D'Amato attacked so bitterly at the Senate Banking Committee hearing.~~

On the issue of whether Mr. Hubbell had disclosed his relationship with his father-in-law, Seth Ward, who was then in ~~litigation with Madison Guaranty,~~ the FDIC stated that it was uncertain whether Mr. Hubbell had disclosed the relationship before the FDIC retained the Rose law firm. Nevertheless, the relationship was plainly known to the FDIC within three months of retention. Mr. Hubbell agreed to the creation of an internal firm "firewall" to guard against him receiving information that might be of use to his father-in-law. At the hearing, Senator Faircloth ridiculed what he called an "Arkansas firewall" through which he claimed light and heat could easily penetrate.

At the hearing, Chairman Hove testified that in 1989, FDIC standards required an actual conflict before the agency would bar a retention. Today, the FDIC's standards are much tougher and would bar a retention on the showing of an ~~"appearance of a conflict of interest."~~ Chairman Hove testified that under today's standards, the Rose law firm facts would present an appearance of a conflict.

~~Chairman Hove agreed to have the FDIC Inspector General~~ ("IG") look into the conflict issue. It was somewhat unclear at the hearing whether the IG would look only at the process by which the FDIC arrived at its decision or would review the substantive issue. It was also unclear whether the IG would apply the actual conflict standard or the appearance of a conflict standard in its review. We should assume, however, that

Rose Law Firm
Page 6 -

Further, it did not report possible conflicts involving the brother-in-law and father-in-law of Webb Hubbell, staff attorney at Rose. Both Seth Ward and Seth Ward, II, had filed suits against Madison. The FDIC became aware of this matter, but Ms. Breslaw, the FDIC attorney assigned to the Madison matters, determined that a conflict did not exist.

D. Ms. Breslaw, who was subsequently assigned to the RTC, did retain Rose in 1989 to represent the FDIC/RTC at Madison. Ms. Breslaw did not recall anyone at the firm telling her that the firm had previously represented Madison. No documentation was found which reflected that the firm had disclosed the representation.

E. A F&I Certification and Legal Services Agreements were reviewed and disclosed the firm did not disclose the Froot and Ward matters.

VII. DISPOSITION OF THIS REPORT:

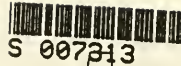
A. This report is provided to the Office of the General Counsel for any action it deems appropriate.

B. This investigation was coordinated with the FDIC, who conducted a separate, independent investigation of these same matters. The FDIC investigating attorney is John Downing.

Attachments


S 007312

ATTACHMENTS



1. Letter, dated April 30, 1985, from Rose to the Arkansas Securities Department.
2. Handwritten note, dated May 6, 1985, regarding Rose.
3. Handwritten note, dated May 6, 1985, regarding a letter to Rose concerning the Madison plan.
4. Letter, dated May 14, 1985, regarding issuance of preferred stock by Madison.
5. Letter, dated July 10, 1985, regarding Madison's application to engage in brokerage activities.
6. Memorandum, dated July 17, 1985, regarding the application submitted by Madison.
7. Letter, dated July 25, 1985, regarding the Madison application.
8. Correspondence relating to the transfer of the Frost matter Rose.
9. Electronic mail, dated January 10, 1994, regarding billing submitted by Rose.
10. Electronic mail, dated January 11, 1994, regarding the law firm's involvement in Madison.
11. Assorted invoices from Rose regarding the Frost matter.
12. Letter from Rose confirming its representation of the FDIC/RTC in the Frost matter.
13. Listing of matters handled by Rose for the FDIC/RTC.
14. Letter to Rose regarding the Frost lawsuit files.
15. Letter regarding conflict concerns to Breslaw.
16. Letter regarding conflict concerns to O'Donnell.
17. Letter regarding conflict concerns to Paulson.
18. Letter from Rose regarding RTC Legal Services Agreement.
19. Legal Services Agreement between Rose and the RTC.
20. Legal Services Agreement between Rose and the FDIC.
21. Electronic Mail, dated January 10, 1994, from Breslaw to multiple parties regarding this investigation.

MEMORANDUM

TO: The First Lady CONFIDENTIAL
FROM: Harold Ickes
DATE: 1 March 1994
RE: Resolution Trust Corporation

It is my understanding that shortly after Roger Altman met with Bernie Nussbaum, me and others concerning the RTC statute of limitations, he received an opinion from an ethics officer of the Treasury Department that he, as the acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty. I will confirm this situation.

X001201

REDACTED
(25 pages)

**DEPOSITION OF HAROLD M. ICKES
IN RE: S. RES. 229**

SUNDAY, JULY 24, 1994

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.**

Deposition of HAROLD M. ICKES, called for examination pursuant to notice of deposition, at 1:50 p.m. in the Dirksen Senate Office Building, Room SD-538, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

J. WILLIAM CODINHA, Esq.

Majority Special Counsel

BETH O'NEILL MALONEY, Esq.

Majority Counsel

MICHAEL CHERTOFF, Esq.

Minority Special Counsel

Committee on Banking, Housing, and Urban Affairs

U.S. Senate

On behalf of the Committee.

ROBERT S. BENNETT, Esq.

AMY R. SABRIN, Esq.

Skadden, Arps, Slate, Meagher & Flom

1440 New York Avenue, NW

Washington, DC 20004-2107

On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Harold M. Ickes	
by Mr. Codinha	10
by Mr. Chertoff	198
Errata Sheets	1496

EXHIBITS

DEPOSITION NUMBER	IDENTIFIED
Harold M. Ickes	
Exhibit 1 (S. RES. 229)	4, 155

P R O C E E D I N G S

1
2 MR. CODINHA: Good afternoon, Mr. Ickes. I'll be
3 giving you some overall instructions about what's going to
4 happen, telling your attorney how he can get a look at the
5 deposition after it's done and then we'll be starting on
6 your deposition. I understand that we're going to break so
7 that you can leave at 4:00. What time do you need to
8 leave?

9 MR. BENNETT: We can go right through.

10 MR. CODINHA: So you don't need to break at
11 4:00?

12 MR. BENNETT: We don't need to break at 4:00. I
13 would like, if possible, to finish by 7:30.

14 MR. CODINHA: We'll attempt to finish this as
15 quickly as possible.

16 Mr. Ickes, my name is J. William Codinha. I'm
17 special counsel to the Senate Banking Committee and I'm
18 working on the conducting of an investigation of Senate
19 Resolution 229 into whether improper conduct occurred
20 regarding A, communications between officials of the White
21 House and the Department of the Treasury or the Resolution
22 Trust Corporation relating to the Whitewater Development

4

1 Corporation and the Madison Guaranty Savings & Loan
2 Association; B, the Park Service Police investigation into
3 the death of White House Deputy Counsel Vincent Foster; and
4 C, the way in which White House officials handled documents
5 in the office of White House Deputy Counsel Vincent Foster
6 at the time of his death.

7 I will tell you, based on the information we have
8 developed in the committee, we believe only A will apply to
9 you, so I likely will not be asking you about B and C under
10 the resolution. At this time, we have had Senate
11 Resolution 229 marked as an exhibit, and it will be the
12 first exhibit in this case.

13 (Ickes Exhibit 1 identified.)

14 MR. CODINHA: I'm joined by Beth O'Neill-Maloney,
15 who is working for me for the majority side in this case,
16 and sitting at the end of the table is Michael Chertoff,
17 who is the Republican special counsel to the committee.

18 This deposition is being taken as a result of a
19 written request from the Senate Banking Committee from the
20 chairman and the ranking member, Senator D'Amato. The
21 deposition is in advance of hearings scheduled to begin on
22 July 29, 1994, and I would advise you that you are likely

1 to be called before the Senate Banking Committee at those
2 hearings. In telling you that, I'm trying to give you a
3 little advance warning so you can plan your schedule.

4 MR. BENNETT: Do we know when he's likely to be
5 called?

6 MR. CODINHA: I would say it would not be this
7 coming week, not starting this week, but I believe it would
8 be the week after that. There's some likelihood although
9 the dates have not been set yet.

10 MR. BENNETT: You will talk to us to
11 accommodate --

12 MR. CODINHA: Oh, yes. We will contact you
13 through your attorneys and we will also notify the White
14 House and they will do the coordination.

15 MR. BENNETT: Thank you.

16 MR. CODINHA: Let me talk a little about the
17 conduct of the deposition. You will be placed under oath
18 and at that time I'll be asking you a series of questions
19 and you'll be expected to give honest and truthful answers
20 to those questions. If you don't understand a question
21 that I've asked you, tell me that. Identify the portion of
22 the question you don't understand and I'll attempt to

1 rephrase it.

2 Your attorney may make an objection as to the
3 form of the question. If that's done, I may ask your
4 attorney to rephrase the question in a way that's
5 satisfactory to him. If it's acceptable to me, it will be
6 asked that way. Otherwise I may ask for you to answer the
7 question I have asked.

8 The stenographer is going to prepare a record of
9 all the questions, answers and any objections taken at this
10 deposition. The transcript of the deposition will be kept
11 committee confidential until the commencement of the
12 hearings, at which time the members will decide how to
13 handle this transcript.

14 You may confer with your counsel at any time
15 during this deposition and although I will tell you that
16 the stenographer will make a note that you're conferring
17 with counsel, it should not deter you in any fashion from
18 talking to your lawyer. You're here represented by counsel
19 and if you want to talk to him, you may talk to him. For
20 the record, counsel will you just identify yourself for the
21 record.

22 MR. BENNETT: Robert S. Bennett.

1 MR. CODINHA: And --

2 MS. SABRIN: Amy R. Sabrin.

3 MR. CODINHA: Mr. Ickes, what we have told
4 counsel -- I'm sorry, what we have told witnesses who have
5 appeared with counsel is that if more than one counsel
6 appear with them, one counsel may speak at the deposition.
7 The other counsel is not to speak at the deposition.

8 Mr. Bennett, who will speak at this deposition?

9 MR. BENNETT: I'll speak.

10 MR. CODINHA: We follow that as a practice;
11 otherwise, lots of people are talking and the stenographer
12 has a problem getting it and we have a problem following
13 it.

14 We will take breaks during the deposition.
15 Usually about every hour and a half or two hours we'll take
16 a break. However, I will advise you that depositions can
17 be tiring and if at any time during the deposition you want
18 a break that isn't a scheduled break, just say I need a
19 break and we'll take a break. There won't be any question
20 as to whether you can get it or not.

21 The other thing I will tell you is if at any time
22 you feel your answers are getting less accurate because you

1 become tired or you just need some space to think about it,
2 tell your lawyer or tell me and we'll take a break.

3 Now, the deposition, after it's prepared, will be
4 kept committee confidential. However, if your attorney
5 wants to review it or if you want to review it, you have to
6 make arrangements with Kelly Cordes at 224-1568 to read
7 it. It's usually prepared the day after your testimony is
8 done. At latest, it will be Tuesday. I suspect very
9 strongly that this will be ready tomorrow.

10 It may be reviewed during ordinary business hours
11 at the offices of the Senate Banking Committee, and
12 ordinary business hours are 9:00 to 5:00. You will not be
13 getting a copy of this transcript unless and until it is
14 released to the public. However, as I said, you can review
15 it.

16 There will be a jurat page supplied for you to
17 make corrections. Your attorney can explain a jurat page.
18 That will allow you to make changes; for instance, if a
19 person's name is used and it's misspelled, that can be
20 changed, minor corrections in transcription, if there's
21 some grammatical change you wish to make.

22 However, I will tell you if there are changes

1 made in the substance of an answer, for instance, a yes
 2 changing to a no, that may require you to be brought back
 3 in and redeposed, and I want to make you aware of that. It
 4 should not deter you, however, from making changes. Since
 5 some counsel believe that they can make changes in the
 6 deposition themselves, we have clarified, if changes are
 7 made on the jurat page, they are to be made by the witness,
 8 not by counsel.

9 The scope of this deposition will be strictly
 10 limited to the scope of the hearings as defined in Senate
 11 Resolution 229. Counsel, as I've said, may make objections
 12 to the form of question and those will be addressed here.
 13 There's a special objection I'd like to tell you about, and
 14 that is that an objection is proper if the subject matter
 15 of the question is outside the scope of Senate Resolution
 16 229. In the event that a scope objection is made and not
 17 resolved on the record, the question will be asked for the
 18 record and held until the conclusion of the deposition, at
 19 which time it will be brought to the attention of the
 20 chairman, Senator Riegle, or his designee, for a final and
 21 binding determination as to whether an answer is required.
 22 If a scope objection is made, please do not

1 answer the question unless you are advised the objection
 2 has been resolved, so we'll just hold that question.

3 Now, having heard what I've said, do you
 4 understand the terms of this deposition?

5 THE WITNESS: I think so.

6 MR. CODINHA: Will the stenographer swear in the
 7 witness, please.

8 Whereupon,

9 HAROLD M. ICKES

10 was called as a witness and, having first been duly sworn,
 11 was examined and testified as follows:

12 EXAMINATION

13 BY MR. CODINHA:

14 Q Mr. Ickes, for the record, would you tell us your
 15 whole name.

16 A Harold Ickes.

17 Q Do you have a middle initial, sir?

18 A M as in Mary.

19 Q How do you spell your last name?

20 A I-c-k-e-s.

21 Q What is your date of birth, sir?

22 A

1 Q And what is your Social Security number?

2 A

3 Q Where do you live?

4 A

5 Q And where in Washington?

6 A

7 Q With whom do you live there?

8 A

9 Q Prior to coming here today, did you talk to

10 anyone besides your counsel about the subject matter of
11 your deposition?

12 A I'm not sure -- come here.

13 (Witness conferred with counsel.)

14 About the subject matter of the deposition --

15 initially, at least, is contacts. Have I talked to
16 anybody?

17 Q Yes.

18 A I've talked to a number of people.

19 Q Have you talked to anybody since you became aware

20 that the Senate is going to depose you since June 22 or

21 shortly thereafter when you received a letter advising you

22 that you may be deposed?

1 And not your counsel, I'm not interested in

2 conversations you had with counsel.

3 MR. BENNETT: I guess the problem he's having is

4 if the thrust of the question is has he talked to people

5 about the substance of what they have testified to or

6 gotten direction as to what he will testify to, the answer

7 is no. This is a matter of discussion generally.

8 THE WITNESS: Exactly. I have not talked to

9 people about the substance but obviously -- not

10 obviously -- there was discussion about just the process

11 and the procedure.

12 MR. BENNETT: I mean, he gets calls from the

13 press, which part of his responsibilities are to deal with,

14 so these are subject matters he's coping with.

15 Let me make it clear to you, we have advised him

16 that we did not want him talking to individual witnesses

17 about their testimony and whatever, and I have no reason to

18 believe that has not been complied with.

19 BY MR. CODINHA:

20 Q Let me ask you that question: Have you talked to

21 individual witnesses about their testimony?

22 A No.

1 Q Did you receive a letter from the Senate Banking
2 Committee requesting production of documents on or about
3 June 22?

4 A I recall such a letter, and I turned it over to
5 Mr. Bennett.

6 Q Did you produce documents independently of the
7 White House producing documents?

8 MR. BENNETT: No.

9 BY MR. CODINHA:

10 Q Did you attempt to see whether you had any such
11 documents that fit within the June 22 letter?

12 A I discussed it with Mr. Bennett and whatever he
13 produced is what complied with the letter, as far as I
14 know.

15 Q Prior to coming here for this deposition today,
16 did you review any documents in preparation of the
17 deposition?

18 MR. BENNETT: Other than what I -- how I prepared
19 him for this?

20 BY MR. CODINHA:

21 Q I want to know if you looked at any documents.
22 I'm not asking you who prepared them for you.

1 A Other than what I looked at with Mr. Bennett and
2 at the House interview yesterday or the interview by the
3 House committee, the answer is no.

4 Q And what documents did you look at?

5 A I looked at --

6 MR. BENNETT: I'm going to let him tell you what
7 he looked at that was shown to him by the House, but not
8 get into what I may or may not have shown him in our
9 meetings.

10 THE WITNESS: As I recall, I looked at what was
11 reported to be a typewritten transcription of a diary made,
12 or part of a diary made by Mr. Steiner and there was a
13 memo -- at least a copy of a memo purportedly from me to
14 the first lady which had attached to it -- which was
15 represented to me as having attached to it, although I
16 didn't see it, a redacted memo, but the memo -- my memo to
17 the first lady was shown to me -- the memo that was
18 attached to that memo was not shown to me. It was reported
19 that -- it was represented there was such a memo. It was
20 heavily redacted but it was not shown to me.

21 What else was shown yesterday?

22 MR. BENNETT: Calendars, appointment books.

1 THE WITNESS: Oh, yes. Calendars -- apparently,
2 there was a calendar that was stated by one of the
3 counsels -- Mr. Bentsen's calendars for a certain period of
4 time during 1994, and a page or two pages from my
5 calendar. I guess there was a page from my calendar as
6 well as a copy of what was represented to me to be one of
7 my schedules that I carry around.

8 MR. BENNETT: Keep your voice up.

9 THE WITNESS: I'm sorry. Just yell.

10 BY MR. CODINHA:

11 Q In anticipation of -- do you recall any other
12 documents that you reviewed?

13 A I reviewed a letter from Mr. Altman, a
14 handwritten letter from Mr. Altman to the president, which
15 I recall receiving after the cutoff date of the subpoena
16 from Mr. Fiske.

17 Q Do you recall any other documents you reviewed in
18 anticipation of this deposition?

19 A Not that I recall, no.

20 Q Were you shown any documents which purported to
21 be the diary or scrapbook of Mr. Altman?

22 A I don't think I saw anything from --

1 MR. BENNETT: Just answer.

2 THE WITNESS: I'm sorry. I don't think I saw
3 anything from Mr. Altman. I don't recall it.

4 BY MR. CODINHA:

5 Q In early July, I believe the Senate Banking
6 Committee sent you a letter request that you come in for
7 this deposition. And I believe you were asked to bring a
8 copy of your curriculum vitae or your CV along. I say "I
9 believe" because some witnesses didn't get that request.
10 Did you not get that request?

11 A I don't recall. I turned the letter over to
12 Mr. Bennett. I have not looked at it since.

13 MR. BENNETT: We will send you one.

14 MR. CODINHA: What I'd like you to do is send a
15 copy of the CV and that will be marked as the next exhibit
16 to the deposition.

17 MR. BENNETT: Fine.

18 BY MR. CODINHA:

19 Q The single question I ask about the CV, without
20 reviewing it, is whether it's accurate. So I'm putting
21 that question to you in anticipation of receiving the CV.
22 Please review it for accuracy and then it will become a

1 part of the record.

2 Have you been interviewed or given testimony to
3 any other investigative body that is investigating the
4 subject matter of Senate Resolution 229?

5 A I have.

6 Q And what investigatory agencies have you given
7 testimony to?

8 A As I recall, it was a joint interview recently by
9 someone from the Treasury Department. I think it was from
10 the Inspector General's office at the Treasury Department
11 and at that same interview, someone from the Office of
12 Government Ethics.

13 Q Have you been interviewed by any other
14 investigative agency?

15 A No.

16 MR. BENNETT: Just the special counsel,
17 Mr. Fiske. We're not quite sure how you --

18 MR. CODINHA: That's fine.

19 THE WITNESS: And the House yesterday.

20 BY MR. CODINHA:

21 Q Have you given any other interviews to any
22 inquirers about the subject matter of Senate Resolution

1 229, such as the White House?

2 A Yes.

3 Q With respect to the Treasury IG's office and
4 Office of Government Ethics interview, when did that take
5 place?

6 A About a week ago.

7 Q Was that interview transcribed?

8 A It was.

9 Q And have you received a copy of the
10 transcription?

11 A Yes.

12 Q Have you reviewed a copy of the transcription?

13 A Yes.

14 Q Do you object to us, the Senate, having a copy of
15 that interview?

16 MR. BENNETT: I don't have any objection to it.

17 MR. CODINHA: We would request at this time that
18 we get a copy of that.

19 MR. BENNETT: And we'll make it a part of this
20 record?

21 MR. CODINHA: Yes. I would tell you that
22 anything we request, either by a letter request or at this

1 deposition will become a part of the record.

2 MR. BENNETT: Fine.

3 BY MR. CODINHA:

4 Q With respect to the Office of Independent
5 Counsel, when were you interviewed by them? That's
6 Mr. Fiske's group.

7 A I don't know that I was.

8 MR. BENNETT: Well, it was a grand jury
9 appearance. He was not interviewed. I assume you don't
10 mind me correcting on these preliminary.

11 MR. CODINHA: No, I don't object to that.

12 THE WITNESS: I wasn't taking that in the context
13 of an interview.

14 MR. BENNETT: He wasn't interviewed. He just
15 made a cold grand jury appearance.

16 BY MR. CODINHA:

17 Q Following the grand jury appearance, were you
18 asked to sit down or speak with any investigators from
19 Mr. Fiske's group, either FBI investigators or other
20 investigators and discuss your testimony?

21 A No, not that I recall.

22 Q You say you've already given testimony to a House

20

1 inquiry investigators?

2 A Yesterday.

3 Q And was a transcription of that taken?

4 A Not to my knowledge.

5 Q Was anyone taking notes at that inquiry?

6 A Yes.

7 Q You indicated that you had given information to
8 the White House. When did that take place?

9 A That took place the same, about a week ago, the
10 same day as I was interviewed by the Treasury IG and
11 representative from the Office of Government Ethics.

12 Q Did it take place at the same time or separately?

13 A No, separately. It took place shortly before the
14 interview by Treasury IG.

15 Q Who did the interview?

16 A Two lawyers with the White House counsel's
17 office. Jane Sherbourne and Sheila --

18 Q Cheston?

19 A Yes, Cheston.

20 Q Was Mr. Cutler present at that interview?

21 A He was not.

22 Q Were you shown any documents at that interview?

1 A I don't recall being shown any. It may have
2 been, but I don't recall any documents.

3 Q Did you now recall any other investigatory
4 agencies that have interviewed you?

5 A No.

6 Q Let me turn your attention to the position you
7 now hold with the government. What is the title of that
8 position?

9 A I'm an assistant to the president and deputy
10 chief of staff.

11 Q When did you take that position or those
12 positions?

13 A During the beginning of the first week of January
14 of 1994.

15 Q Prior to the first week of January of '94 when
16 you took those positions, had you held any other position
17 in the administration beginning from January 20th of 1993?

18 A No, I had not.

19 Q Prior to holding that position, had you played
20 any unpaid roles with the administration beginning after
21 January 20, 1993?

22 A For a very short period of time, some 10 days to

22

1 two weeks maximum, as I recall, I was working in the White
2 House.

3 Q When did that 10-day, two-week period occur?

4 A It started with the 20th of January and ran on.

5 Q You were there from the 20th of January, 1993 for
6 10 days or two weeks?

7 A Very late January or very early February when I
8 went back to New York.

9 Q What role were you playing at that time?

10 A I had been involved in the transition effort in
11 Little Rock. I was the deputy to Warren Christopher, and I
12 came up basically to follow up on some of the work I had
13 been doing there in helping staff the White House, and
14 basically that's what I was doing.

15 Q To the best of your knowledge, how did it come
16 about that you became an assistant to the president and
17 deputy chief of staff?

18 A I was asked by the president and by Mr. McLarty,
19 who was then the chief of staff.

20 Q Had you known Mr. McLarty before being asked to
21 be his deputy chief of staff?

22 A Yes.

1 Q And had you known the president before he asked
2 you -- strike that.

3 For how long a time had you known the president
4 before he asked you to become an assistant?

5 A Since the early 1970s.

6 Q How had you known the president, in what
7 capacity, if any?

8 A A friend.

9 Q You're a friend of his. And had you maintained a
10 friendship with the president between the early 1970s and
11 the time he became president?

12 A Yes.

13 Q As advisor to the president -- I'm sorry, as
14 assistant to the president, what are your duties and
15 responsibilities?

16 A My primary responsibilities are to coordinate the
17 president's health care initiative. I also coordinate the
18 White House's role in the 1994 elections as well as the
19 relationship -- the White House's relationship to political
20 efforts generally and to the Democratic National
21 Committee.

22 And when I first came there, I had some

1 responsibility with respect to dealing with the press and
2 responding to the press on what is known generally as
3 Whitewater matters. A number of other things will come up
4 during the course of a day or week but those are my primary
5 responsibilities.

6 Q As assistant to the president, to whom do you
7 report?

8 A I report -- well, as assistant to the president
9 deputy chief of staff, I report to the chief of staff.

10 Q Let me ask you, is your whole title assistant to
11 the president, deputy chief of staff?

12 A Either dash, or and.

13 Q Those are not separate roles, but they're one
14 role?

15 A They're one role, yes.

16 Q As far as you know, did anyone have that position
17 before you took it?

18 A Yes.

19 Q Who was that position?

20 A Immediately before me, I think it was Roy Neel,
21 N-e-e-l, I think. Let me add for clarification, there is a
22 second deputy chief of staff by the name of Phil Lader,

1 L-a-d-e-r.

2 Q So you report to the chief of staff in your role
3 as assistant to the president and deputy chief of staff?

4 A Yes.

5 Q Do you report to anyone else?

6 A No. I report to the chief of staff.

7 Q Do you report to the President of the United
8 States?

9 A Well, all of us report to the President of the
10 United States.

11 Q Do you report directly to the president or
12 through the chief of staff?

13 A It depends on the subject matter and the
14 situation at hand. Sometimes I speak directly with the
15 president. Most of my time, however, I speak directly with
16 the chief of staff.

17 Q In the White House hierarchical structure, there
18 is counsel to the president. Do you report to the counsel
19 to the president?

20 A I don't report to the counsel of the president.
21 I speak with the counsel of the president.

22 Q In terms of the White House hierarchical

1 structure, are you on equal footing with counsel to the
2 president or above that or below that, if you know?

3 A I think it depends upon the subject matter of the
4 question.

5 Q So on legal matters, the counsel to the president
6 would be on a higher matter but on general matters, you
7 would be on either the same level or you might be higher?

8 A Exactly.

9 Q With respect to senior advisors to the president
10 and the hierarchical structure, do you report to senior
11 advisors to the president?

12 A Again, it depends upon the subject matter. If
13 it's a subject matter directly within the scope of another
14 senior advisor, I don't know whether I would use the term
15 "report," but I would certainly discuss and perhaps
16 report. It really depends upon the circumstances.

17 Q With respect to the issue of Whitewater, would
18 you report to senior advisors to the president -- strike
19 that.

20 Are there senior advisors to the president to
21 whom you would report?

22 A To the chief of staff.

1 Q The chief of staff has a title of chief of
2 staff. I'm now talking about senior advisors to the
3 president, such as Bruce Lindsey.

4 A I wouldn't report to him. I would discuss
5 matters with him, but I would not report to him. I
6 reported, on Whitewater I reported to the chief of staff,
7 who is also a senior advisor.

8 Q Are you aware of whether Mr. Stephanopoulos is a
9 senior advisor to the president?

10 A There's no title. Senior -- I don't think
11 there's a title "senior advisor." It is a judgment that is
12 reached, I think, by others, but Mr. Stephanopoulos would
13 be considered, in my view, a senior advisor to the
14 president.

15 Q On the matter of Whitewater, would you report to
16 Mr. Stephanopoulos on matters?

17 A No. I would discuss matters with him.

18 Q Did you consider Mr. Lindsey on the matter of
19 Whitewater to be in the hierarchical structure equal to
20 you?

21 A With respect to what matters?

22 Q Whitewater.

1 A He was very knowledgeable about Whitewater. I
2 didn't report to Mr. Lindsey, but I certainly discussed
3 matters with him.

4 Q And with respect to Mr. Stephanopoulos, on the
5 hierarchical structure with respect to the subject matter
6 of Whitewater, did you consider him above or on the same
7 level as you were?

8 A Same level.

9 Q I have been using a term here, "Whitewater," and
10 let me perhaps define it. As I am going to be asking you
11 questions, I'm going to use two terms. One is Whitewater
12 Development Corporation. Another is the Madison Guaranty
13 Savings & Loan Association. For convenience's sake, I may
14 only refer to them as Whitewater and Madison and with the
15 permission of your lawyer and yourself, I will do that if
16 there's no objection.

17 When did you first -- strike that.

18 You've been responding to questions about
19 Whitewater. When did you first become aware of Whitewater?

20 A Let me say, I have not been interpreting
21 Whitewater as you've just defined it. When did I first
22 become aware of it? Through general press accounts on a

1 very ad hoc basis during the course of 1993. I first heard
2 of Whitewater during the either primary or general election
3 campaign of 1992.

4 Q With respect to Madison, when did you first --
5 when, if ever, did you first become aware of Madison?

6 A It was sometime during 1993 through newspaper
7 accounts.

8 Q Before coming to work at the White House in the
9 first week of January of 1994, did you do any work for the
10 White House, perhaps in the fall or early winter up through
11 December of 1993, with respect to Whitewater or Madison?

12 A No.

13 Q Were you consulted by anyone in the White House
14 with respect to Whitewater or Madison during that time
15 period?

16 A I don't recall being consulted.

17 Q Are you aware -- as we sit here today, are you
18 aware of a 1992 -- let me withdraw the question.

19 Do you know what the initials RTC stand for?

20 A I think in this context, I assume they stand for
21 Resolution Trust Corporation.

22 Q And that's what I mean by that. As we sit here

1 today, are you aware of a 1992 criminal referral concerning
2 Madison, which mentions the Clintons?

3 A As I sit here today?

4 Q Yes.

5 A Yes.

6 Q When did you first become aware of that?

7 A It was not until 1994, and I think to the best of
8 my recollection, it was not until sometime in February of
9 1994, and I can't place it any closer than that.

10 Q And what was the -- how did you become aware of
11 the 1992 RTC criminal referral?

12 A It was either through -- I don't know which came
13 first, either through a press account or someone telling
14 me -- somebody who works in the White House telling me
15 about it and I couldn't tell you who, when or what time.

16 Q Putting aside the press account for the moment,
17 if it were someone in the White House, do you recall how it
18 came about that that was being discussed?

19 A I don't.

20 Q Do you recall whether it was someone from the
21 White House counsel's office or some other office of the
22 White House?

1 A No. As I said, I don't know who, when or where.

2 Q What did you come to know about the 1992 RTC
3 criminal referral in February of 1994?

4 A Come to know through any source?

5 Q First, what did you come to know and then I'll
6 ask you about the source of that information.

7 A Generally, that there had been -- my
8 understanding is there had been a criminal referral or at
9 least a proposed criminal referral which had been, I think,
10 rejected either by RTC or by the Justice Department and
11 there was, I gather, or my understanding was there was a
12 subsequent reopening of that. I don't know the final
13 disposition on that.

14 Q Have you now told me all you can recall of what
15 you knew about the 1992 criminal referral?

16 A That's the essence of it.

17 Q Do you recall the source of your information,
18 that it had been rejected by the RTC or by Justice?

19 A My recollection, as I sit here today, it was
20 either through somebody in the White House or through a
21 press account, and I couldn't tell you which came first.

22 Q Did you have -- did that cause you to ask why the

1 referral had been rejected by the RTC or Justice to the
2 individual who was telling you about it?

3 A Not that I recall.

4 Q Did you have any curiosity as to why that had
5 been rejected by the RTC or Justice?

6 A I think I had read it in a press account of why
7 it had been rejected and I didn't probe beyond that.

8 Q Do you recall today what that press account of
9 why it had been rejected?

10 A I don't.

11 Q You also indicated that you might have had
12 conversation about the reopening of that referral. Do you
13 recall what was said to you about the reopening of that
14 referral?

15 A I don't recall any specific conversation. It is
16 my recollection that it was reopened, and I either learned
17 of that through an account or accounts of somebody in the
18 White House or through the press. I don't know which came
19 first.

20 Q Do you recall questioning at that time why the
21 referral had been reopened?

22 A I recall either questioning or learning about it

1 through press accounts.

2 Q Did you learn the reason why the referral had
3 been reopened?

4 A Well, I read press accounts of why it had been
5 opened.

6 Q What's your understand today of why it had been
7 reopened?

8 A My understanding is -- as I recall, people in --
9 RTC employees in Kansas City asked that it be reopened or
10 developed additional information. I don't recall the exact
11 nature and circumstances of it being reopened.

12 Q Do you recall whether you discussed the fact that
13 RTC employees in Kansas City had requests that the 1992
14 criminal referral be reopened? Did you discuss that with
15 anyone in the White House?

16 A I may well have. I don't recall any specific
17 instance.

18 Q As we sit here today, are you aware that there
19 were a second set of nine RTC criminal referrals which were
20 made in 1993 concerning Madison which also mentioned the
21 Clintons?

22 A Second set of nine?

1 Q A second set of nine criminal referrals.

2 A No, it's the first time I heard either the second
3 set or nine.

4 Q When you were responding to my earlier questions,
5 and I was asking you about the 1992 referral, as we sit
6 here today, do you recall it was a 1992 referral that was
7 being discussed?

8 A It could have been 1993. I don't recall.

9 Q At some point, did you learn about a meeting
10 which occurred on September 29th of 1993 that involved the
11 Treasury Department and the White House?

12 A I learned about it, yes.

13 Q And when was the first time you learned about the
14 September 29th meeting?

15 A As I recall, it was sometime during the month of
16 February. It could have been January, but I recall it
17 being during the month of February.

18 Q What were the circumstances under which you
19 learned about the September 29th meeting?

20 A It could have been either through somebody --

21 MR. BENNETT: Don't speculate. He's entitled to
22 full and complete answers, but could -- don't speculate.

1 THE WITNESS: I don't recall.

2 BY MR. CODINHA:

3 Q As best you can recall today, how do you believe
4 you found out about the September 29th meeting?

5 MR. BENNETT: You can answer it if you can answer
6 it.

7 THE WITNESS: It was either through an individual
8 in the White House or through a press account.

9 BY MR. CODINHA:

10 Q Do you recall any individual in the White House
11 who told you about the September 29th meeting?

12 A As I sit here today, no.

13 Q It has been reported that Mr. -- strike that.

14 The committee has developed evidence that
15 Mr. Nussbaum attended the September 29th meeting. Do you
16 recall Mr. Nussbaum telling you that he was at the
17 September 29th meeting?

18 A He may well have. I don't recall specifically.

19 Q The committee has developed evidence that
20 Mr. Sloan, Mr. Clifford Sloan -- do you know who Clifford
21 Sloan is?

22 A I do.

1 Q Let me take a step back and I apologize for
2 this. Do you know who Bernard Nussbaum is?

3 A I do.

4 Q And was he counsel to the president when you
5 arrived at the White House?

6 A He was.

7 Q Do you know who Clifford Sloan is?

8 A I do.

9 Q Who did you know Clifford Sloan to be?

10 A I don't know his exact title, but I think he was
11 an associate or assistant counsel to the president.

12 Q He worked in the legal office?

13 A He worked in the counsel's office.

14 Q With respect to Mr. Sloan, do you recall
15 discussing with Mr. Sloan the September 29th meeting?

16 A I don't have a specific recollection of it. I
17 may well have.

18 Q In your discussions with people at the White
19 House who you can't now recall, do you recall the subject
20 matter of the September 29th meeting being discussed?

21 A When you say the "subject matter" --

22 MR. BENNETT: He's not sure he had

1 conversations. He said conversations or the press. But
2 what you're asking him is if there were conversations?

3 BY MR. CODINHA:

4 Q Is it helpful at all to you in remembering
5 whether or not conversations occurred in the White House
6 with respect to the September 29th meeting?

7 A There were conversations. I can't place the
8 time, date or who.

9 Q Now, with respect to those conversations, what
10 were you told by people in the White House occurred at the
11 September 29th meeting?

12 A I don't recall any detailed conversations about
13 what occurred at the September meeting.

14 Q Do you recall general conversations of what
15 occurred at the September meeting?

16 A No.

17 Q Do you recall conversations of who was involved
18 at the September meeting -- strike that -- of who was
19 present at the September meeting?

20 A Yes.

21 Q Who do you recall who you were told was present
22 at the September 29 meeting?

1 A I don't recall being told by anyone who was
2 present. I recall there being press account and discussion
3 revolving around those press accounts.

4 Q Do you recall being told by anyone at the White
5 House that individuals from the Department of the Treasury
6 were present at the meeting?

7 A I recall discussions about who was present at
8 those meetings.

9 Q And the discussions, did they revolve around the
10 fact that officials from the Department of Treasury were
11 present?

12 A Yes, that had been reported in the press.

13 Q And was that then discussed at the White House
14 after it had been reported in the press?

15 A It was.

16 Q Did people confirm that people from -- did people
17 at the White House confirm that people from the Department
18 of Treasury had been present at the September 29th meeting?

19 A I don't recall any direct confirmation to me.

20 Q Was there discussion which was, in your presence,
21 as to the appropriateness of people from the Treasury being
22 present at the September 29th meeting?

1 A It had been raised in the press and I think there
2 was discussion around it.

3 Q Who was having that discussion?

4 A I don't recall.

5 Q Was this just general corridor discussion, or was
6 this discussion that was being held at meetings?

7 A Basically corridor discussion, as far as I was
8 concerned.

9 Q Were you able to determine from the general
10 corridor discussions what had been discussed at the
11 September 29th meeting?

12 A No.

13 Q Did you ever ask Mr. Nussbaum what had been
14 discussed at the September 29th meeting?

15 A I may have. I don't recall that I did.

16 Q Did you ever ask Mr. Sloan what had been
17 discussed at the September 29th meeting?

18 A Same answer.

19 Q Do you know who Neil Eggleston is?

20 A I do.

21 Q And did you know him to be a lawyer in the
22 department of the counsel to the president?

1 A Yes.

2 Q The legal office.

3 A Yes.

4 Q Did you discuss with Mr. Eggleston the subject
5 matter of the September 29th meeting?

6 A I don't recall having any specific discussions
7 with him about the subject matter.

8 Q Did you become aware of a meeting which took
9 place on October 14th of 1993 at the White House?

10 A I don't know the exact date. I recall that there
11 was discussion about an October meeting.

12 Q And where did that discussion take place?

13 A I'm sorry?

14 Q Did that discussion at the place at the White
15 House?

16 A I don't think I confirmed there was a
17 discussion. I said I became aware of it. I became
18 aware -- let me back up. I became aware of a meeting in
19 October.

20 Q And how did you become aware of a meeting in
21 October?

22 A I don't recall whether it was through a press

1 account or through one or more individuals in the White
2 House discussing it.

3 Q If it were through one or more individuals in the
4 White House discussing it, who would those individuals have
5 been, if you can recall?

6 A I don't recall.

7 Q Did you come to find out who was present at the
8 October meeting?

9 A As I recall, I did. As I sit here today, I
10 couldn't tell you who they were.

11 Q Did you come to find out that Mr. Nussbaum was
12 present at the October meeting?

13 A I could well have. I don't recall.

14 Q Did you come to find out that Mr. Sloan was
15 present at the October meeting?

16 A Same answer.

17 Q Did you come to find out whether Mr. Eggleston
18 present at the meeting?

19 A Same answer.

20 Q Did you come to find out whether Mr. Gearan was
21 present at the October meeting?

22 A Same answer.

1 Q To the best of your memory, when did you first
2 become aware of the October meeting?

3 A I think it was sometime in February, and there
4 had been -- I think there had been a press account or press
5 accounts about it.

6 Q Did you become aware whether any people from the
7 Treasury Department were present at the October meeting?

8 A As I recall, there had been Treasury people. I
9 couldn't tell you their names. That's the answer.

10 Q Did you know who Josh Steiner was?

11 A At what time?

12 Q In February of 1994.

13 A Yes, I did.

14 Q Did you know that he was chief of staff to
15 Secretary Bentsen of the Treasury?

16 A That's what I had been told.

17 Q And previously to that, he had been the principal
18 assistant to Roger Altman who was deputy secretary of the
19 Treasury?

20 A I came to know that, yes.

21 Q And did you know in February of '94 who Jean
22 Hanson was?

1 A I did in February of '94, yes.

2 Q Did you come to know -- did I just ask that you
3 knew she was general counsel to the Treasury?

4 A In February, I learned that. I learned that.

5 Q Did you know who Jack DeVore was?

6 A I knew from press accounts that he had been a
7 close aide to Senator Bentsen -- or now Secretary Bentsen.

8 Q And was working at the Treasury in the office of
9 public affairs? Did you know that?

10 A My understanding is he was Secretary Bentsen's
11 chief spokesman.

12 Q Did you understand that Mr. DeVore was in a
13 communications department of the Treasury?

14 A I didn't focus on what department he was in. I
15 didn't know what department he was in.

16 Q Did you become aware in February of 1994 that
17 Mr. Steiner had been present at the October meeting?

18 A Again, I don't recall any specific individuals.
19 As I sit here today, I don't recall his name ever being
20 raised, at least in my presence, and I had no knowledge of
21 that.

22 Q Did you become aware that Ms. Hanson had been

1 present at the meeting?

2 A Again, I don't remember specific individuals.

3 Q Do you have any notes or materials that would
4 help you remember whether this was discussed at the
5 meeting?

6 A Not that I recall. Whatever notes were included
7 in Fiske's subpoena have been turned over to my counsel.

8 Q Did you become aware sometime after 1994 when you
9 started working at the White House that a memorandum of the
10 October meeting had been prepared?

11 A I do not recall learning about that. I may well
12 have but as I sit here today, I don't recall.

13 Q Have you reviewed a copy -- strike that.

14 Have you ever seen a copy of a memorandum from
15 Bruce Lindsey to the file which related to this meeting?

16 A I may have. As I sit here today, I don't recall.

17 Q Do you recall --

18 MR. BENNETT: May I ask, is that the same memo?

19 MR. CODINHA: Is what the same memo?

20 MR. BENNETT: The October memo. You referred to
21 the October memo and you asked if he saw the Lindsey memo.
22 Is that the same memo?

1 MR. CODINHA: It's the same memo I'm referring
2 to.

3 BY MR. CODINHA:

4 Q Do you recall seeing a memo that was prepared by
5 Mr. Lindsey that concerned the Whitewater Development
6 Corporation?

7 A Any memo?

8 Q Yes.

9 A I don't recall at this point any specific memo.
10 I may have, but I don't recall any specific memo.

11 MR. BENNETT: I would ask -- excuse me. I would
12 ask if there are such memos and he can't remember, if you
13 want to refresh his recollection.

14 MR. CODINHA: First, I'd like to test his memory.

15 MR. BENNETT: Okay.

16 BY MR. CODINHA:

17 Q Do you recall there being more than one memo of
18 Mr. Lindsey's referring to the Whitewater Development
19 Corporation?

20 A I have no recollection of that.

21 Q Do you recall there being at least one memo?

22 A I don't recall that either. There may well have

1 been, but I don't recall it.

2 Q You indicated that one of your roles when you
3 came in as assistant to the president and deputy chief of
4 staff was to deal with the press on the issue of
5 Whitewater. Do you recall testifying to that earlier
6 today?

7 A Yes.

8 Q What preparation were you given when you came in
9 in January of 1994 to be able to do that?

10 A We had, during the first two or 2-1/2 weeks, I
11 ran a meeting that was held generally twice a day with a
12 group of people who were knowledgeable about Whitewater and
13 knowledgeable about -- also people who were dealing with
14 the press on it. And that's how I came to be informed
15 about Whitewater.

16 Q Did this meeting that took place two times a day,
17 when did those meetings occur, when during the day?

18 A Typically fairly early in the morning and
19 typically in the late afternoon.

20 Q How long did they last?

21 A It depended. Anywhere from half an hour to an
22 hour, maybe a little longer, depending on the kind and

1 nature and amount of press inquiry we were getting.

2 Q And these meetings, they began when you first
3 arrived and they lasted, I believe, you said for two weeks
4 or more?

5 A Two, 2-1/2 weeks with that regularity.

6 Q Following that, did the meetings continue --
7 following the 2-1/2 weeks, did the meetings continue but
8 with less regularity?

9 A With less regularity.

10 Q How often did they then occur?

11 A As I recall, two or three times a week, and even
12 tapering off to less than that.

13 Q Have they occurred through the present day?

14 MR. BENNETT: I'm going to object on scope and
15 pertinency.

16 MR. CODINHA: I'll withdraw the question.

17 BY MR. CODINHA:

18 Q Up until March 10, how often did the meetings
19 occur?

20 MR. BENNETT: We're talking about meetings, I
21 assume, given your introductory remarks, that are limited
22 to contacts with the Treasury. That's my assumption, given

48

1 your preliminary remarks. Is that correct?

2 MR. CODINHA: That is the scope and focus of this
3 investigation, Mr. Bennett.

4 (Witness conferred with counsel.)

5 THE WITNESS: The meetings that I've been talking
6 about didn't have anything to do with contacts between the
7 White House and the Treasury Department.

8 BY MR. CODINHA:

9 Q And how were you able to determine that they
10 didn't have anything to do with contacts between the White
11 House and the Treasury?

12 A As far as I knew, there were no contacts between
13 the White House and the Treasury during that period of
14 time.

15 Q Between what period of time? I'm sorry.

16 A January.

17 Q In January there were no contacts between the
18 White House and Treasury?

19 A Not that I knew of.

20 Q Why don't we talk about who was at the
21 meetings -- first, let's see if we can define the
22 meetings.

1 Did this group have a name?

2 A It had no -- no, it had no official name.

3 Q Did it have an unofficial name of the Whitewater
4 response team or Whitewater response group?

5 A I think that that would be fair that's how it was
6 referred to within the White House.

7 Q And who was in charge of that group?

8 A I was in charge.

9 Q Where did the meetings take place? I'm saying
10 where in the White House.

11 A No, I understand. During the first two, 2-1/2,
12 three weeks, they typically took place in what is known as
13 the ward room, which is the basement or the so-called
14 basement of the west wing.

15 Q Who participated in the meetings?

16 A It varied, but I guess, as I recall -- do you
17 want me to name specific names?

18 Q Please.

19 A George Stephanopoulos, Paul Begala, on occasion
20 James Carville, Michael Waldman, Bernie Nussbaum, Joel
21 Klein, Neil Eggleston, Maggie Williams, David Gergen, Mark
22 Gearan. On an irregular basis, Dee Dee Myers, myself.

50

1 That's pretty much the complement. That is the best of my
2 recollection.

3 Q Did Clifford Sloan attend those meetings?

4 A I think on occasion. I'm not sure he was a
5 regular participant but as I recall, he was at some of the
6 meetings.

7 Q Did Beth Nolan attend those meetings?

8 A Again, I think on an irregular basis.

9 Q Did Mr. Podesta attend those meetings?

10 A I don't recall him being there. He may well have
11 been, but I don't recall him and certainly not on a regular
12 basis.

13 Q Did Lisa Caputo attend those meetings?

14 A She attended some. I don't think on a regular
15 basis.

16 Q Now, Mr. Nussbaum was counsel to the president?

17 A Yes.

18 Q What was his role at the meeting?

19 A He was a participant.

20 Q And what was his -- who determined who came to
21 these meetings?

22 A I did.

1 Q Was this a by-invitation-only meeting or could
2 anyone come at any time?

3 A No. It was a by-invitation meeting.

4 Q How did you determine who should attend any given
5 meeting?

6 A It was basically the same group of people. I
7 thought consistency was useful. And as I said, the purpose
8 of these meetings was to deal with a very high number of
9 press inquiries that were coming in on a daily and weekly
10 basis about this matter, what we call, generically, inside
11 the White House, Whitewater. I'm not using that in the
12 sense you've defined it, but it's generic name inside the
13 White House and we were getting, as I say, a very large
14 number of press inquiries and the purpose of these meetings
15 was to deal with those.

16 Q With respect to Mr. Stephanopoulos, I think you
17 have said he was an advisor to the president, and I use the
18 term "senior advisor" and I think you agreed he would be
19 seen as a senior advisor?

20 A Yes. Again, that's not a specific title in the
21 White House, although I think George may carry that. But
22 as a generic term, he would certainly be considered a

1 senior advisor.

2 Q And Mr. Stephanopoulos was involved in the White
3 House communications department or I think at one point he
4 had been director of communications for the White House,
5 had he not?

6 A He had been. His job duties and title were
7 changed, but he still continues to be very involved with
8 the press.

9 Q You mentioned the name Begala?

10 A Paul Begala, who is an outside advisor, outside
11 consultant, as is James Carville.

12 Q And you mentioned, I think, a Mr. Whalen --

13 A Waldman. Michael Waldman is on the staff and in
14 the communications department at the White House.

15 Q What position does he hold?

16 A I think he is -- there's assistant, deputy
17 assistant -- I'm going down the hierarchy -- I think
18 Michael is special assistant to the president for
19 communications.

20 Q Mr. Nussbaum, we have already said, is counsel to
21 the president?

22 A Yes.

1 Q So he's the chief legal officer in the White
2 House?

3 A At that time he was.

4 Q In January or the time we're talking about?

5 A Yes.

6 Q And Joel Klein is in the counsel -- he's an
7 attorney in the counsel's office?

8 A He is.

9 Q And he is also a legal officer to the president?

10 A Well, he's in the counsel's office functioning as
11 a lawyer.

12 Q And Neil Eggleston was again, a lawyer in the
13 counsel's office?

14 A Yes.

15 Q And Maggie Williams, or Margaret Williams, was
16 chief of staff to the First Lady of the United States?

17 A Was and is.

18 Q I believe you mentioned Mr. Gergen. What role --

19 A David Gergen. David Gergen was, at that time
20 counselor to the president --

21 Q And --

22 A -- was his title.

1 Q What position did he play in the White House
2 administration?

3 A General senior advisor.

4 (Pause.)

5 Q I think when we stopped, I was asking about
6 Mr. Gergen and you had answered Mr. Gearan. Do you know
7 who Mr. Gearan?

8 A Mark Gearan is the director of communications for
9 the White House at that time and still is.

10 Q And Dee Dee Myers, did she hold a communications
11 position?

12 A She was in the communications department working
13 under Mr. Gearan and she is the press secretary, press
14 spokesman.

15 Q Cliff Sloan, he's a counsel in the White House
16 legal department?

17 A He is.

18 Q Beth Nolan is also counsel in the White House
19 legal department?

20 A Same.

21 Q And is she a specialist in ethics for the White
22 House?

1 A That's my understanding, that she is a specialist
2 in ethics.

3 Q Lisa Caputo, what role did she play?

4 A She's the press secretary for Mrs. Clinton.

5 Q And I believe you said you're not sure whether
6 Mr. Podesta attended these meetings?

7 A I don't recall his ever attending them. He may
8 well have.

9 Q Is there anyone else you can think of who
10 attended the Whitewater response team meetings?

11 A Not that I recall.

12 Q What role was Mr. Nussbaum, the chief legal
13 officer to the president, to play at these meetings?

14 A He played the same role everyone else did. He
15 was a participant in the meetings, and he had
16 information -- other people had information and as I said,
17 focus of these meetings was to deal with, as best we could,
18 voluminous press inquiries and make sure there was a
19 coordinated response, that there were not different
20 responses coming from different people based on different
21 information.

22 Q Was Mr. Lindsey a participant in those meetings?

1 A I'm sorry, you're right. He was.

2 Q Was he a regular participant in the meetings?

3 A He was.

4 Q He is also, I believe, a senior advisor to the
5 president or at least an advisor to the president who would
6 be considered a senior advisor to the president?

7 A He is.

8 Q Do you recall what is his portfolio at the White
9 House? What does he do?

10 A He basically is a senior advisor. He's somewhat
11 like Mr. Gergen. He advises the president on any number of
12 matters. He's been very close with the president over a
13 number of years and is a trusted confidant and advisor,
14 both political and otherwise.

15 Q With respect to Mr. Lindsey, did he have
16 particular knowledge with regard to Whitewater matters?

17 A In my view, he had considerable knowledge.

18 Q I'd like to go back for the moment to
19 Mr. Nussbaum. You said he had information that was --
20 strike that. You said he had some information.

21 What did Mr. Nussbaum bring to the table that you
22 needed in terms of being the head of the Whitewater

1 response team?

2 A Somebody who knew some aspects of Whitewater and
3 could give advice, especially in connection with answering
4 accurately and as quickly as possible questions of the
5 press.

6 Q Is Mr. Nussbaum's position a communications
7 position that he has to interface directly with the press?

8 A No, but we were being asked a lot of questions
9 about Whitewater and I put together a group of people who I
10 felt could contribute to responding to those questions as
11 quickly and as accurately as possible and as consistently
12 as possible.

13 Q When you arrived at the White House, did you know
14 that the issue of you dealing with the press on Whitewater
15 was going to be part of your portfolio?

16 A I did not.

17 Q When you arrived, who informed you of that
18 information?

19 A The chief of staff.

20 Q And that would have been Mack McLarty?

21 A Yes.

22 Q I'm sorry, Mr. McLarty.

1 A Mr. McLarty. It doesn't matter.

2 Q What did Mr. McLarty inform you were to be your
3 duties and responsibilities as particularized on
4 Whitewater?

5 A He said that there was a lot of -- many, many
6 questions coming in from the press that he felt that we
7 were not responding as quickly and as effectively as we
8 could and asked me to take charge of that and try to pull
9 together a system in which we could quickly and effectively
10 and accurately respond to the press.

11 Q Were you given a briefing book on Whitewater when
12 you arrived to at least let you know what this was all
13 about?

14 A No, not that I recall. I talked to a number of
15 people. I don't recall any specific people.

16 Q How did you decide who, at the White House, who
17 you should talk to about the subject of Whitewater?

18 A I basically asked several people who had been
19 involved and was knowledgeable. I knew that the counsel's
20 office had been involved. I knew Mr. Lindsey had a great
21 deal of knowledge about it. He had been reporting in the
22 press, as had Stephanopoulos, and there were a number of

1 people who were speaking to the press about it. So it was
2 my view that we should get all of those people in one room
3 on a consistent basis.

4 Q You say you "knew the counsel's office had been
5 involved." What was the source of your information that
6 the White House's counsel's office was involved?

7 MR. BENNETT: I've given you an awful lot of
8 leeway on this.

9 MR. CODINHA: We might disagree.

10 MR. BENNETT: Can't we get to the communications
11 between officials of the White House and Department of
12 Treasury? I don't think this should be a pretext of you
13 learning about all the internal processes of the White
14 House and I'd like you to limit it to the scope of what
15 your assignment is, with all due respect.

16 MR. CODINHA: Thank you.

17 BY MR. CODINHA:

18 Q With respect to your information that the
19 counsel's office at the White House had been involved, what
20 was the source of that information?

21 A Where are we?

22 MR. BENNETT: I'm going to object to that on

1 pertinency scope grounds.

2 BY MR. CODINHA:

3 Q What was the source of your information?

4 MR. BENNETT: I'm instructing him not to answer.

5 MR. CODINHA: Mr. Bennett --

6 MR. BENNETT: I'm instructing him not to answer.

7 MR. CODINHA: I heard what you said. I'm trying
8 to address your objection. I will tell you that this

9 committee has developed information at the present time
10 that there were contacts between the White House and
11 Treasury Department and RTC, and RTC, Treasury and the
12 White House which involved the counsel's office. That is
13 clearly within the scope of this. I want to know the
14 source of the -- I want to know the source of your client's
15 information that the counsel's office had been involved.

16 That's what I'm focused on. It's clearly within the scope.

17 MR. BENNETT: Are you finished?

18 MR. CODINHA: I believe I am.

19 MR. BENNETT: I have no objection to you asking
20 my client about conversations regarding contacts with the
21 Treasury, but I object generically to your using that as a
22 pretext to delve into processes of the White House which

1 have nothing to do with the scope. If you want to ask him
2 what conversations he had with the counsel's office about
3 contacts, I have no objection nor could I have an objection
4 to that.

5 MR. CODINHA: This is a preliminary question,
6 Mr. Bennett.

7 BY MR. CODINHA:

8 Q I'm asking you now, Mr. Ickes, what was the basis
9 for your information that the counsel's office had been
10 involved?

11 A In what?

12 Q We have been talking about information with
13 respect to Whitewater. Now, what's the basis of your
14 information that the counsel's office had been involved?

15 A Newspaper accounts, among other things.

16 Q In what newspapers was it reported that the
17 counsel's office had been involved with Whitewater?

18 A I don't recall.

19 Q When you heard the counsel's office had been
20 involved, you wanted to -- strike that.

21 Now, taking on your role as assistant to the
22 president and deputy chief of staff, you were interested in

1 doing a good job in that role. That would be accurate to
2 say, isn't it?

3 A Yes.

4 Q And in order to do that, you thought you had to
5 talk to some people because you didn't have a whole lot of
6 direct information about Whitewater; is that correct?

7 A Yes.

8 Q So did you go about talking to people to find out
9 what they knew?

10 A Yes.

11 Q Now I'm focusing on the counsel's office. With
12 respect to Mr. Nussbaum, did you have direct conversations
13 with Mr. Nussbaum about what he knew about Whitewater?

14 A Generally.

15 Q When did those discussions occur?

16 A Soon after I arrived at the White House.

17 Q Where did they occur?

18 A I don't recall.

19 Q Did you take notes about those discussions?

20 A I don't recall that I did. I may have. But I
21 don't recall that I did.

22 Q Did you have anyone who was assisting you in

1 coordinating the Whitewater response group?

2 A I was coordinating it.

3 Q Did you have a deputy or an assistant who was
4 helping you?

5 A No.

6 Q When you talked to Mr. Nussbaum, did he tell you
7 that he had spoken to the Treasury Department, or RTC
8 through the Treasury Department about Whitewater?

9 A During what period of time?

10 Q During the time when you first spoke to
11 Mr. Nussbaum about the information that he had about
12 Whitewater.

13 A I have no recollection of that. I don't think he
14 did.

15 Q What did he tell you about Whitewater?

16 A Just a general --

17 MR. BENNETT: About the contacts? I'm limiting
18 him to contacts with the Treasury Department under A, which
19 you very carefully described to us as being the scope in
20 the beginning. I'm not going to let him tell you what
21 anybody and everybody said about Whitewater in general.

22 MR. CODINHA: Is this on instructions from the

64

1 White House?

2 MR. BENNETT: It's on instructions from me as the
3 lawyer and it's based on the United States Senate
4 resolution. You have no authority to go beyond this
5 resolution.

6 MR. CODINHA: Is this also instructions from the
7 White House?

8 MR. BENNETT: This is not instructions from the
9 White House. This is my instructions to my client.

10 MR. CODINHA: And if I may ask, Mr. Bennett, have
11 you been asked by the White House to be cooperative in this
12 investigation?

13 MR. BENNETT: I've been asked to be cooperative
14 and we are being cooperative, but you are limited to your
15 resolution, and I'm not going to --

16 MR. CODINHA: We aren't in dispute about that.

17 MR. BENNETT: Let's get on with it and stick to
18 the resolution.

19 BY MR. CODINHA:

20 Q When Mr. Nussbaum -- Mr. Ickes, I'm sorry, I
21 don't want you to be focusing on something else. I'm
22 afraid you won't hear the question.

1 A I'm just looking around. I hear the question.

2 Q When you spoke to Mr. Nussbaum, did he give you
3 some information about the Whitewater investigation?

4 MR. BENNETT: Don't answer that unless it's
5 limited to the contacts.

6 MR. CODINHA: I think he can tell me if he gave
7 him some information because if he didn't give him --

8 MR. BENNETT: Why don't you ask if he gave him
9 any information about contacts with the Treasury or
10 anything covered by scope A.

11 MR. CODINHA: Mr. Bennett, respectfully, I have
12 great respect for your reputation which has preceded you
13 into the room, but let me also tell you that no one has a
14 conversation where they say and I learned this from this
15 person and I learned this from this person and I learned
16 this from this person. You know, you, of all people, know
17 how an investigation is conducted. We have deposed a lot
18 of people, including Mr. Nussbaum. We have determined in
19 some ways where Mr. Nussbaum got information.

20 Now, I'm asking your client about the information
21 he got from Mr. Nussbaum about particular matters which
22 relate to Whitewater. I'm not asking him about what he

1 learned from the President of the United States. I'm not
2 asking what he learned about from the first lady. I'm
3 asking him particular questions about Mr. Nussbaum who the
4 committee has developed evidence was at meetings with the
5 RTC/Treasury in September and October.

6 I think it's a legitimate area of inquiry. What
7 I don't want to happen is for us to get a scope objection
8 here where we have to delay it because you've already told
9 me that you want to complete this today, which is going to
10 cause us to delay these questions and your client is going
11 to have to be back here again. I'm telling you it's our
12 opinion -- it's certainly my opinion that this is a
13 legitimate area of inquiry.

14 Would you like to put something on the record.

15 MR. BENNETT: I appreciate your flattery and kind
16 remarks but my reputation has absolutely nothing to do with
17 this. What this has to do with is the resolution. Just so
18 the record is clear, I have absolutely no objection at all
19 for you asking my client what communications he had with
20 anybody regarding communications between officials of the
21 White House and the Department of the Treasury or the
22 Resolution Trust Corporation. And that's what I'm

1 instructing him to answer.

2 MR. CODINHA: I certainly recognize your
3 objections. It's on the record.

4 BY MR. CODINHA:

5 Q Mr. Ickes, back to my question. Did you have
6 conversations with Mr. Nussbaum in the early part of
7 January at which you discussed Whitewater with him? I
8 think you can answer that yes or no.

9 MR. BENNETT: You can answer that question. Show
10 you what a good guy I am. Go ahead.

11 THE WITNESS: Yes.

12 BY MR. CODINHA:

13 Q Now, when you had the conversations with
14 Mr. Nussbaum, was anyone else present?

15 A I don't recall. They might have been.

16 Q You were there. Mr. Nussbaum was there.

17 A And there may well have been others. I have no
18 recollection as to whether there were or were not.

19 MR. BENNETT: Keep your voice up. Amy is having
20 trouble hearing you.

21 THE WITNESS: I'm sorry.

22 BY MR. CODINHA:

1 Q Do you recall whether Mr. Nussbaum used any notes
2 to brief you?

3 A I don't recall any such notes.

4 Q Did Mr. Nussbaum give you any materials in order
5 to brief you about the subject?

6 A He may well have. I don't have any specific
7 recollection.

8 Q When you talked to Mr. Nussbaum in early January,
9 did he report to you that there had been a criminal
10 referral in 1992 relating to Madison which mentioned the
11 Clintons?

12 A He may have. I don't think he did, and I have no
13 recollection of it.

14 Q When you spoke to Mr. Nussbaum in early January
15 of 1994, did he mention to you that there were nine
16 referrals or that there were referrals from the RTC which
17 had been sent from Kansas City to Washington to Little
18 Rock?

19 A He may have. I don't think he did, but I have no
20 specific recollection of it.

21 Q Did Mr. Nussbaum mention to you, when he talked
22 to you in early January, about checks that were part of the

1 referral that had dealt with the Clinton campaign
2 committee?

3 A Would you repeat that.

4 Q When Mr. Nussbaum spoke to you in early January,
5 did he tell you about the referrals, referring to four
6 cashier's checks, two made payable to the Clinton campaign
7 committee and two made payable to Bill Clinton?

8 MR. BENNETT: Objection. What does this have to
9 do with the scope of this resolution?

10 MR. CODINHA: I would represent to you that --

11 MR. BENNETT: I'm instructing him not to answer.

12 MR. CODINHA: On what basis?

13 MR. BENNETT: Unless you can show me what the
14 scope and pertinency is.

15 MR. CODINHA: I don't know that I have to show
16 you that but I would tell you, Mr. Bennett, the committee
17 has developed evidence that that information was coming
18 from Treasury and RTC. And if that is the case and it is
19 being relayed to your client, then that is within the scope
20 of this case.

21 MR. BENNETT: I don't have any problem if you ask
22 him if he's aware of any knowledge or information that

70

1 Treasury forwarded to Mr. Ickes or anybody else. Then I
2 don't have any problem if you tie it to this, but I'm not
3 going to be letting him answering questions in a vacuum
4 when I don't know whether or not it's a communication or
5 not. If you know it's a communication, tie it to that and
6 I'm not going to object.

7 MR. CODINHA: Fine.

8 BY MR. CODINHA:

9 Q Did Mr. Nussbaum tell you about these checks?

10 A What checks?

11 Q The four checks, two made payable to the Clinton
12 for Governor campaign, two made payable to Bill Clinton, in
13 your earlier January meeting.

14 MR. BENNETT: Hold it.

15 (Witness conferred with counsel.)

16 MR. BENNETT: Go ahead and answer.

17 THE WITNESS: I don't know what checks you're
18 talking about.

19 BY MR. CODINHA:

20 Q You don't recall Mr. Nussbaum telling you about
21 that?

22 MR. BENNETT: He's answered the question.

1 MR. CODINHA: He says he doesn't recall what
2 checks I'm talking about.

3 BY MR. CODINHA:

4 Q I'm now asking you, do you recall Mr. Nussbaum
5 telling you anything that this case involved campaign
6 checks?

7 A Sir, there was a lot of discussion over a long
8 period of time about a lot of different aspects of
9 Madison/Whitewater. Some of that came from newspaper
10 accounts. Some of that came from many other people. A lot
11 of this information has merged, as I sit here today, were
12 there checks -- were there discussions about checks over
13 the two- or three- or four-month period, yes. When those
14 discussions occurred, with whom they occurred, where I
15 learned about them and what they had to do with, I couldn't
16 tell you today.

17 Q Do you recall Mr. Nussbaum telling you at the
18 early meeting, this early January meeting that he had
19 confirmed or had a confirmation from the RTC that criminal
20 referrals had been made from the RTC to the Justice
21 Department?

22 A I don't recall. He may have. I don't have any

1 specific recollection, and I don't think he did.

2 Q Do you recall Mr. Nussbaum telling you at this --

3 MR. BENNETT: Let me ask you. I'm assuming when
4 you predicate a question this way that there's a basis in
5 fact.

6 MR. CODINHA: That there's a basis, yes? Let me
7 take a step back.

8 MR. BENNETT: I'm assuming Nussbaum told you he
9 told Ickes, this because if that's not true, then I think
10 these are unfair questions.

1 MR. CODINHA: Whether they're fair or not, that's
2 exactly what -- that's exactly what I didn't want to say.
3 I will say that it is fair to assume that the underlying
4 information contained in the question about whether
5 something was contained, that there were four checks, that
6 they related to that, is correct. Don't assume that the
7 information was related to your client. It isn't
8 necessarily the case, and I want to represent that.

9 MR. BENNETT: So when you say did X tell you, did
0 Y tell you, we can't assume that that's a fact, that X told
1 him or Y told him?

2 MR. CODINHA: I don't know what X told him

1 because you won't let me ask generally what he was told.
2 If you let me ask that generally, then I could find out.
3 Now I have to ask specifically.

4 MR. BENNETT: If you say did Mr. Smith tell you
5 something, did Mr. Jones tell you something, is a lot
6 different from saying with the predicates that you're
7 putting on these questions. The assumption I've been
8 making all along is a witness has told you he told Ickes
9 something. But any way, I'm on the record on that point,
10 so ask your next question.

11 BY MR. CODINHA:

12 Q Let me ask you, was there -- strike that.

13 Do you recall having any discussion with
14 Mr. Nussbaum at this early January meeting as to the
15 status, be that subject, target or witness that the
16 Clintons held?

17 A That the Clintons held?

18 Q Yes, in respect to the referrals.

19 MR. BENNETT: What do you mean by "held"?

20 BY MR. CODINHA:

21 Q Let me take a step back for a minute. Are you
22 familiar with the terms "subject," "target" and "witness"

1 as they are used in the criminal area?

2 A I'm not a criminal lawyer.

3 Q Whether you're a criminal lawyer or not, are you
4 familiar with the terms?

5 A I've heard those terms. I couldn't define them.

6 Q Do you recall whether Mr. Nussbaum told you in
7 January what status the Clintons held in the RTC referrals
8 in which they had been allegedly named?

9 A I have no specific recollection. I don't think
10 he did, but he may have. I have no recollection, and I
11 don't think he did. As I think I've said before to you, I
12 don't think I knew about the criminal referrals or the
13 so-called criminal referrals until much later in the
14 process.

15 Q Do you recall whether Mr. Nussbaum informed you
16 that he was monitoring those criminal referrals to see
17 whether the Clintons' status changes?

18 A I have no recollection of that. We're talking
19 early January?

20 Q Early January.

21 A No recollection. I don't think it occurred, but
22 I have no recollection.

1 Q How long do you recall speaking to Mr. Nussbaum
2 about the subject of Whitewater, the length of time at this
3 early January meeting?

4 A 15 or 20 minutes.

5 Q Did he appear to be a knowledgeable person about
6 the subject to you?

7 A Compared to me, yes.

8 Q Would it be fair to say when you walked in and
9 received the information that you were going to head up the
10 Whitewater response group or team in January, you knew
11 nothing about it except what you read in the newspapers?

12 A Well, I think I've testified that Whitewater
13 generally -- I had run into Whitewater during the primary
14 or general election campaign in 1992 but only in passing.
15 I knew nothing about the details. I think all I knew was
16 it had something to do with the land transaction in
17 Arkansas. That's literally all I knew and the rest of my
18 information up until early January had come through reading
19 a couple newspaper accounts. I found it so convoluted and
20 confusing I didn't bother to read much about it.

21 Q When Mr. McLarty gave you this assignment as part
22 of your portfolio, did he -- I asked you whether he gave

1 you a briefing book. Did he give you any materials to
2 read?

3 A Not that I recall. I don't think so.

4 Q Did he instruct you as to who would be the most
5 knowledgeable people that you should talk to?

6 A Well, he suggested, as I recall, he suggested I
7 talk to Lindsey, that I talk to Nussbaum, that I talk to
8 Stephanopoulos, among others.

9 Q With respect to Mr. Klein, do you recall speaking
10 with Mr. Klein in early January?

11 A I recall speaking to him.

12 Q Again, I'm not interested -- I'm not interested
13 in whether you spoke to him about what the weather was
14 outside. I'm talking about Whitewater and the subject of
15 Senate Resolution 229.

16 A I have no specific recollection of any specific
17 conversations. I'm confident that I probably did and as
18 has been testified to earlier, he was a participant in
19 these early meetings.

20 Q What role was he to play, Mr. Klein?

21 A Again, someone who seemed to have some
22 information about Whitewater. It was my purpose to get

1 people who were knowledgeable about Whitewater in one room.

2 Q Were you able to determine what the source of
3 Mr. Klein's information about Whitewater was?

4 A The answer is it depended on the day and the
5 circumstance. I mean, it was -- each of these meetings,
6 the purpose was to develop information and coordinate
7 information to respond effectively and accurately and
8 quickly to the press. Some information came from outside
9 sources. Some came from newspaper accounts. Sometimes
10 newspaper accounts would raise questions that people would
11 then look up and find out about so we could have, in
12 effect, an accurate response to the press on the questions.

13 Q Mr. Neil Eggleston was a participant -- strike
14 that.

15 I think you listed Neil Eggleston as a
16 participant in these meetings.

17 A I did.

18 Q What role -- Mr. Eggleston was also in the
19 counsel's office. What role did he play?

20 A Same as Nussbaum and Klein.

21 Q And that was that they appeared to know something
22 about the issue and they were bringing information to the

1 table as it related to Whitewater?

2 A They were bringing in information and they also
3 helped research questions that our press people were
4 getting by way of press inquiries so we could give, again,
5 accurate, effective and quick responses.

6 Q When you say they were researching questions, did
7 you view it as part of their role, that they should reach
8 out to the agencies to get accurate information?

9 A I didn't have any specific role in mind. I just
10 asked them if people thought that they could find out
11 answers to questions and that they would bring those
12 answers back. I didn't have any particular sources that
13 they should look at or go to.

14 Q Was it your intent, if a question was raised
15 about the referrals that needed a factual answer, the
16 criminal referrals, that it would be either Mr. Nussbaum,
17 Mr. Klein, Mr. Eggleston or Mr. Sloan from the legal office
18 that would contact those agencies?

19 A As I said, I didn't instruct them to contact any
20 agencies, and I don't know if they contacted any agencies.

21 Q Did you tell them not to contact agencies?

22 A When you speak of "agencies," what agencies are

1 you referring to, the federal government?

2 Q Yes, federal government agencies.

3 A I didn't instruct them to. I didn't instruct
4 them not to, and I don't know whether they did or whether
5 they didn't.

6 Q Did they offer information at these Whitewater
7 response teams that was responsive to questions that were
8 being raised about what was happening at the Treasury
9 Department or the RTC with respect to the cases?

10 MR. BENNETT: You're not talking about legal
11 advice.

12 MR. CODINHA: Not legal advice.

13 THE WITNESS: Again, I don't recall Treasury/RTC
14 being involved in the early discussions. They may well
15 have been, but I don't recall any discussions about
16 Treasury and/or RTC.

17 BY MR. CODINHA:

18 Q Mr. Cliff Sloan, I think we've mentioned him as
19 an attendee at these meetings and he was also from the
20 counsel's office. What role was he to play at these
21 meetings?

22 A Same as Nussbaum, Klein, Eggleston.

1 Q And Ms. Beth Nolan, I think we mentioned her as
2 an attendee at these meetings?

3 A I don't think she was a regular attendee, but
4 again, same as the others.

5 Q With respect to Ms. Nolan, did you at some time
6 come to understand that she was an ethics expert in the
7 White House?

8 A I was told that.

9 Q Was that early on, or was that later in your
10 career there?

11 A I don't recall when.

12 Q Was she brought to the Whitewater response team
13 to be there in her role as an expert on ethics?

14 MR. BENNETT: I'm going to object on scope and
15 pertinency grounds.

16 BY MR. CODINHA:

17 Q What was your purpose in having her there?

18 A She was a person who, I was told, had some
19 knowledge about Whitewater.

20 Q That she had knowledge about the underlying facts
21 of Whitewater?

22 A She had knowledge about Whitewater.

1 Q Had you been told she was a person who had been
2 in contact with the Treasury Department and RTC relating to
3 Whitewater?

4 A In that early period?

5 Q Yes.

6 A I don't recall being told that.

7 Q Did you later find out she was a person who was
8 in contact with the Treasury or RTC with respect to aspects
9 of Whitewater?

10 A I think sometime later, I learned that she had
11 been in contact with Treasury.

12 Q And when was that time?

13 A To the best of my recollection, it was around, I
14 think, early February.

15 Q Are you familiar with an event that's referred to
16 as Renaissance Weekend or the Renaissance time or words to
17 that effect?

18 MR. BENNETT: Let me just ask you on some of this
19 stuff for some guidance. In preparing him for his
20 testimony, there's all sorts of things we've brought to his
21 attention, which he did not know in real terms.

22 MR. CODINHA: I'm just asking if he's familiar

1 with the term. I'm not going to spend a lot of time on it.

2 BY MR. CODINHA:

3 Q Are you familiar with Renaissance Weekend?

4 A I'm familiar with the term.

5 Q Did you know about the term before your attorney
6 prepared you for your deposition testimony?

7 A Yes.

8 Q Have you attended these Renaissance weekends?

9 A Never.

10 Q And with respect to the Renaissance Weekend that
11 occurred, the most recent one that occurred, I believe,
12 over the New Year's weekend or New Year's Eve, have you
13 become aware of the press accounts relating to a
14 conversation which occurred between the President of the
15 United States and Mr. Ludwig, the Comptroller of the
16 Currency?

17 A I've skimmed the press accounts. This has been a
18 very, very intense and busy period for me on health care,
19 so I have not focused a lot of attention but I was aware
20 there were newspaper articles or such recently, and I
21 remember skimming them quickly.

22 Q With respect to those press accounts, had you

1 been aware of that conversation before you read the press
2 accounts?

3 A Not to the best of my knowledge. I don't recall
4 ever hearing about it.

5 Q Do you recall there being any discussion of the
6 president talking with Mr. Ludwig at your Whitewater
7 response group?

8 A No. I have no recollection of that.

9 Q Do you recall whether Mr. Klein discussed that at
10 a Whitewater response group?

11 A I have absolutely no recollection of that.

12 Q Are you aware of whether Secretary Bentsen from
13 the Treasury Department was asked to attend a meeting with
14 Cabinet level officials at the Whitewater relating to
15 Whitewater in early January?

16 (Witness conferred with counsel.)

17 THE WITNESS: I had not heard it until my counsel
18 informed me of it yesterday.

19 BY MR. CODINHA:

20 Q Do you know who Christine Varney is?

21 A I do.

22 Q Is she the Cabinet secretary?

1 A She is.

2 Q And it's her job -- strike that.

3 In her role as Cabinet secretary, is it her job
4 to put together these meetings?

5 A What meetings?

6 Q Just meetings of Cabinet level officials that are
7 going to occur at the White House.

8 A Typically. There are meetings with Cabinet level
9 officials that she is not involved with. But typically,
10 she is the contact person between the White House and the
11 Cabinet as it relates to the organizational meetings.

12 Q With respect to Ms. Varney, have you had any
13 conversations with her with respect to a meeting where she
14 requested Secretary Bentsen not to appear because it was
15 going to discuss Whitewater?

16 A Is that the same meeting you referred to earlier
17 a few minutes ago?

18 Q It could be, but I'm not sure whether it's the
19 same meeting.

20 A The answer is no.

21 Q During the course of January of 1994, did you
22 become aware of a statute of limitations issue that was

1 being raised on the civil aspects of Madison?

2 A During what month?

3 Q January of 1994.

4 A Could have been. I mean, I recall definite
5 discussions about it in February, and there may well have
6 been some discussion about it in January.

7 Q Was this a subject matter that was being
8 discussed by the Whitewater response group?

9 A Not to my recollection.

10 Q Did the Whitewater response group become involved
11 in the civil aspects of Madison, or was it only dealing
12 with the criminal referral questions?

13 A No. The Whitewater response group was dealing --
14 attempting to deal with, let me put it that way -- with any
15 and all questions that were being made or inquiries being
16 made by the press which was a very intensive period over
17 that period of time. That was its primary purpose and
18 that's what we were focused on. There was no
19 differentiation between criminal and civil. It was just
20 questions relating to what is generically known in the
21 White House, not by your definition, as Whitewater.

22 MR. BENNETT: I'm going to somewhat belatedly

86

1 object to the form of the question because it assumes that
2 the White House response group was, in fact, talking about
3 criminal referrals, and I don't think that's what his
4 testimony has been.

5 MR. CODINHA: I can put that question to the
6 witness and perhaps you can answer.

7 BY MR. CODINHA:

8 Q As I understand your answer, the Whitewater
9 response group was responding to all Whitewater inquiries,
10 whether they were civil or criminal?

11 A Yes, and to my recollection, I don't recall
12 during those early weeks in January focus on or questions
13 about the criminal referrals. There could have been, but
14 as I sit here today, I don't recall any specific questions
15 about that. I'd have to go back and look at the press
16 record basically to find out if there were.

17 Q Did anyone keep notes or records of the
18 Whitewater response group meetings -- first, let me ask,
19 were official records of the Whitewater response group
20 meetings kept?

21 A No.

22 Q Was someone required to take notes?

1 A No.

2 Q Did individuals take notes at those meetings, if
3 you noticed?

4 A Some individuals did.

5 Q Did you take notes?

6 (Witness conferred with counsel.)

7 A I kept notes.

8 Q Would it be correct to say that if they pertain
9 to the scope of Senate Resolution 229, that they have been
10 delivered to the committee?

11 A Yes.

12 Q And you have reviewed your notes yourself or
13 along with your attorney?

14 A I have.

15 MR. BENNETT: I just want you to clearly
16 understand that it was the White House counsel's office
17 that had the responsibility of making the productions to
18 Congress. I have every reason to believe that everything
19 has been turned over, but I just want you to know that they
20 took upon themselves the responsibility, and apparently
21 Congress wanted them to do it rather than counsel for the
22 individuals.

1 BY MR. CODINHA:

2 Q I can't now recall. Did you receive a direct
3 letter from Chairman Riegle and minority -- and the ranking
4 member to look through your records to determine whether
5 you had responsive items? It would have been June 2.

6 A I recall receiving -- I recall receiving a
7 photocopy, and I think the letter was addressed to me, but
8 I think it was a photocopy. I don't think it had an
9 original signature on it, and I subsequently contacted
10 Mr. Bennett and sent that photocopy over to him. I think
11 that Mr. Bennett had told me he had already received a copy
12 of it. That's my best recollection.

3 Q But you understood that you had a personal
4 responsibility to make sure we received all the
5 information?

6 A Right. I relied on my counsel.

7 MR. BENNETT: We produced documents to the White
8 House. I can't be sure, as we sit here, whether they gave
9 you all the documents that we gave them. They may very
10 well have made some redactions. For what it's worth, I am
11 not aware of any documents that you're referring to, but --
12 it's just a technical point, that the White House took upon

1 itself the responsibility of making productions.

2 We produced documents to White House counsel's
3 office, and they were going to decide what they produced to
4 you. I will tell you that I think what we gave to the
5 White House were all the documents we gave to Mr. Fiske. I
6 think it was the same universe of documents, wasn't it?
7 Yes.

8 BY MR. CODINHA:

9 Q Mr. Ickes, with respect to the matter of the
10 statute of limitations that was to apply to Madison, did
11 you become aware in January, sometime in January, perhaps
12 after the middle of January that the issue of the statute
13 of limitations application to Madison was a matter of
14 congressional interest?

15 A I don't recall specifically whether it was the
16 end of January or early February, but it was around that
17 time.

18 Q Do you recall becoming aware that sometime in
19 January Senator D'Amato had taken the floor of the Senate
20 and had a countdown calendar where he was counting down the
21 days that were left until the statute of limitations had
22 run?

90

1 A I recall that. I don't recall -- again, I don't
2 recall whether it was during late January or early
3 February, but it was around that time.

4 Q Do you recall how you became aware of this, that
5 the statute of limitations was an issue?

6 A I don't.

7 Q Do you recall receiving a copy of a letter that
8 had been sent from Senator D'Amato to Mr. Altman with
9 respect to this?

10 A I don't recall. I mean, if you show me the
11 letter, it might refresh my recollection but as I sit here
12 today, I don't recall.

13 Q I'd like to show you X1264 and 1265.

14 (Witness reviewed document.)

15 Having shown you that letter, which is -- I've
16 already given the number to the stenographer -- does that
17 help you to recall when you might have become aware of the
18 statute of limitations issue?

19 A It may well have been around this time. I don't
20 recall specifically receiving a copy of this letter. I
21 probably did, but as I said, it was probably late January
22 or early February.

1 Q And I would tell you, Mr. Altman, that this
2 letter has been supplied by the White House --

3 MR. BENNETT: This is Mr. Ickes.

4 BY MR. CODINHA:

5 Q I'm sorry, Mr. Ickes. I was reading the
6 address. I apologize.

7 Mr. Ickes, we have received this from the White
8 House and we have been informed that it came from your
9 files at the White House. Is that useful in knowing
10 whether you received a copy of the letter?

11 A It is. I don't know when I received it but it is
12 useful in knowing whether I received it.

13 Q If you received a copy of this letter, would you
14 have read it?

15 A I probably would have read it, yes.

16 Q Do you recall that the subject matter of this
17 letter became a matter that was discussed by the Whitewater
18 response group?

19 A I don't recall it specifically, no. And I point
20 out to you, as I testified earlier, that the Whitewater
21 response team on that date would have been meeting on a
22 much less frequent basis than during the first two weeks or

92

1 10 days of January.

2 Q I think by this time -- "this time" being January
3 25 or shortly thereafter -- you indicated the group was
4 being two or three times a week rather than twice a day.
5 Would that be accurate?

6 A Again, I don't want to pin it to a specific
7 number, but it was certainly no more than several times a
8 week, two or three is probably an accurate
9 characterization.

10 MR. BENNETT: Harold, you've got to keep your
11 voice up.

12 THE WITNESS: I'm sorry.

13 MR. BENNETT: This lady's got to hear it.

14 BY MR. CODINHA:

15 Q When you read this letter, did you consider the
16 information contained in it was important information for
17 you to know as you were working on your job dealing with
18 the press on Whitewater?

19 A If it was a matter of press inquiry, certainly.

20 Q But did you think that when you read this letter,
21 this was something that you cared about?

22 A I thought it was something I should know about.

1 Q How did you attempt to know something about it,
2 if you did?

3 A I probably asked others in the White House. I
4 may have asked counsel's office. I may have asked other
5 people in the White House.

6 MR. BENNETT: Just so the record is clear, you
7 said when you read it, and I don't think he testified that
8 he read it.

9 MR. CODINHA: I believe what he said -- and the
10 record will state this -- I believe he said since it was in
11 his files, he believed he had read it.

12 THE WITNESS: That's accurate but as I testified
13 before, I don't recall when I received it.

14 BY MR. CODINHA:

15 Q I understand that. Is there any reason to
16 believe that you wouldn't have received it on or about the
17 time that is recorded on the letter or on the fax times
18 that are recorded at the top of the letter?

19 A I have no belief as to when I received it.

20 Q Would there be any -- does this letter contain
21 the sort of information that it would be important for you
22 to know to be able to do your job correctly as the

1 coordinator of information dealing with the press on
2 Whitewater?

3 A Certainly if there were press inquiries about it,
4 it would be important.

5 Q Does the fact that Senator D'Amato is sending
6 this letter to Mr. Altman suggest to you that there would
7 be press inquiries about it?

8 A Probably. Not necessarily so, but probably.

9 Q What information do you recall -- strike that.
10 Do you recall whether you asked White House
11 counsel's office about information so you can respond to
12 what was contained in this matter?

13 A I don't recall specifically whether it was White
14 House.

15 Q Do you recall asking anyone for information so
16 you could respond to what was contained in that letter?

17 A As I sit here today, no.

18 Q Does it make sense to you that when you became
19 aware of that letter, you would have asked someone for
20 information?

21 A It makes sense.

22 Q Who would be the people or persons to whom you

1 would turn to get information about that?

2 A I don't have any specific recollection of who I
3 would have. There were a number of people who may have
4 known about it.

5 Q Do you believe you would have turned to
6 Mr. Nussbaum?

7 A I may have. I don't recall.

8 Q Do you believe you would have turned to
9 Mr. Eggleston?

10 A Again, I may have. I don't recall.

11 Q Do you believe you would have turned to
12 Mr. Sloan?

13 A Same answer.

14 Q Do you believe you would have turned to
15 Mr. Lindsey?

16 A Same answer.

17 Q Do you believe you would have turned to
18 Mr. Altman to find information?

19 A Possibly. I don't recall talking to him about it
20 in connection with this letter.

21 Can I just have a minute?

22 (Witness conferred with counsel.)

1 BY MR. CODINHA:

2 Q Do you recall learning -- strike that.

3 Do you recall discussing the matter of the
4 statute of limitations as it applied to Madison with
5 Ms. Williams?

6 A What time period?

7 Q In late January of 1994 -- late January or early
8 February of 1994.

9 A Yes.

10 Q When do you recall having that discussion with
11 Ms. Williams?

12 A Well, I recall Ms. Williams being in a meeting in
13 which the statute of limitations was -- in which a statute
14 of limitations that involved Resolution Trust Corporation
15 was discussed and that meeting, as I recall, occurred on
16 the 2nd of February 1994. I may have had a discussion with
17 them prior to that but I don't have a specific recollection
18 of that.

19 Q With respect to the February 2nd meeting, when
20 did you first become aware of a meeting that was to occur
21 on February 2nd?

22 A My recollection is that a day or so -- it may

1 have been the day preceding, or it may have been a day or
2 so preceding, I have no specific recollection but shortly
3 before February 2nd -- my recollection is that Mr. Altman
4 called me in my office and said that he wanted to have a
5 meeting with Mr. McLarty and with me and that he wanted to
6 bring his -- when I say "his," the Treasury's general
7 counsel to that meeting.

8 Q Prior to the telephone call that you received a
9 day or two before the February 2nd meeting, did you know
10 who Mr. Altman was?

11 A I did.

12 Q How had you known Mr. Altman?

13 A I'd known him casually over a number of years.

14 Q Did you know him in New York?

15 A I did.

16 Q When you came to Washington, did you know him in
17 your official role as he held the official role in
18 Washington?

19 A Yes.

20 Q Did you have any interaction with Mr. Altman in
21 the month of January 1994 in your professional capacity?

22 A Yes.

1 Q And did that relate to Whitewater?

2 A Not that I recall.

3 Q How many times did you interact with Mr. Altman
4 in January in your professional capacity?

5 A It was several times a week. As the coordinator
6 of the president's health care initiative, I had -- and I
7 don't recall when -- but as I recall, it was sometime early
8 on in January, I had established several meetings that
9 occurred on a regular basis and one of them was a 6:00
10 meeting that was supposed to occur every day of the week;
11 that is, Monday through Friday. Unless it was canceled by
12 me in advance, everybody had their calendars marked about
13 it so they wouldn't have to be notified. Mr. Altman was a
14 member of that very small group and he attended it on a
15 regular basis so I saw Mr. Altman in that connection as
16 well as others, but primarily that was the primary
17 connection.

18 Q Prior to a day or two before February 2nd when
19 you received this call from Mr. Altman, had you had any
20 discussions with Mr. Altman on the subject of Whitewater?

21 A I don't recall. I probably did. He was in the
22 White House a great deal, both with respect to the meetings

1 that I have discussed as well as other business that he was
2 dealing with in the White House. I probably did. I
3 couldn't place a time or date or location on any of this.

4 Q When you say you "probably" did, when do you
5 recall the first time you would have talked to Mr. Altman
6 at the White House about the subject of either Whitewater
7 or Madison in January?

8 A I have no recollection. There were a lot of
9 conversations going on about Madison/Whitewater --

10 MR. BENNETT: Keep your voice up.

11 THE WITNESS: There were a lot of conversations
12 going on in the White House during that period of time,
13 primarily because of the intense press scrutiny, so I have
14 no recollection of whether I did. As I said, I probably
15 did, but I couldn't give you a time or a date.

16 BY MR. CODINHA:

17 Q Was Mr. Altman a member of the Whitewater
18 response group in the White House?

19 A He was not.

20 Q Was he invited to participate in that group?

21 A He was not.

22 Q Did you understand him to be a knowledgeable

100

1 person about Whitewater or Madison?

2 A At that period of time, I don't think I had any
3 knowledge about what he knew or what he didn't know.

4 Q How did it come about that you had discussions in
5 January with Mr. Altman about the subject of Whitewater or
6 Madison, if you didn't know he was a knowledgeable person?

7 A Corridor discussion, what's going on, what do you
8 think, how do you think it's playing.

9 Q Do you recall those type of conversations
10 occurring when you would say to Mr. Altman what's going on,
11 what response did he make?

12 A What's going on in terms of, how do you think
13 it's playing.

14 Q And what was Mr. Altman's response?

15 A I don't recall his specific responses.

16 Q Did he indicate to you that it was playing just
17 fine?

18 A I don't recall his specific responses.

19 Q Do you recall a general response that he was
20 satisfied with the way it was playing?

21 A I don't think anybody was satisfied with the way
22 it was playing.

1 Q Did Mr. Altman indicate to you that any -- strike
2 that.

3 Did Mr. Altman follow up with you by saying well,
4 what do you mean how's it playing?

5 A As I say, first of all, I don't recall any
6 specific conversations. I probably did, and if they were
7 the casual what's going on, how is it playing type, nobody
8 was happy with how it was playing.

9 Q Do you recall ever discussing with Mr. Altman --
10 strike that.

11 During this time period, you were having daily
12 meetings on health care; is that right? When I say "this
13 time period," during the month of January 1994?

14 A During the month of January, the 6:00 Monday
15 through Friday meetings began. I informed the participants
16 that they should block their calendars for every day of the
17 week and that my office would notify them if I was not
18 going to hold such a meeting, but they occurred on a
19 regular basis, typically three to four times a week.

20 Q And do you recall discussing with Mr. Altman at
21 the White House in either corridor meetings or these
22 meetings the statute of the limitations as it applied to

1 Madison?

2 A I don't recall -- I don't think I did. I have no
3 specific recollection that I did.

4 Q Did it strike you that he would be a person who
5 would be particularly well-informed about that subject?

6 A Yes, assuming that I knew about that subject, and
7 I'm not sure when I came to know about that subject.

8 Q As soon as you came to know about the subject,
9 Mr. Altman struck you as a person who would be particularly
10 well-informed, didn't he?

11 MR. BENNETT: I don't understand the question.
12 I'm sorry.

13 BY MR. CODINHA:

14 Q Do you understand the question, Mr. Witness?

15 A Not really.

16 Q You understood Mr. Altman held a particular
17 position with the RTC, did you not?

18 A At what time period?

19 Q In January.

20 A I did not.

21 Q At some point, did you come to know Mr. Altman
22 held a particular position with the RTC?

1 A Yes.

2 Q When was that?

3 A My best recollection, it was in connection during
4 the meeting we've talked about before on the 2nd of
5 February.

6 Q Was that the first time you were aware that
7 Mr. Altman held a unique position in the RTC?

8 A To the best of my recollection it was, yes.

9 Q And what position did you come to understand, in
10 that February 2nd meeting, that Mr. Altman held?

11 A It was my understanding, based on his
12 description, that he was, for lack of a better word, the
13 temporary president of RTC and that that position had to be
14 filled but by virtue of a statute of the RTC statute, it
15 was my understanding that he was either the president or
16 the chairman -- I forget which -- and I also learned or was
17 told that there was an oversight board, an RTC oversight
18 board of which Secretary Bentsen was chairman, at least
19 that's what I was led to believe.

20 Q And you were informed of that at the February 2nd
21 meeting?

22 A To the best of my recollection, it was the first

1 time I knew about that -- his role, his specific role and
2 position with respect to RTC.

3 Q And it was at that meeting that you also learned
4 of the role Secretary Bentsen was playing on the oversight
5 board?

6 A That's the best of my recollection.

7 Q Now, turning your attention to the telephone call
8 that you received from Mr. Altman a day or two before the
9 February 2nd meeting, do you know the reason Mr. Altman
10 called you?

11 A I do not. Let me back up. His stated reason was
12 he wanted to have a meeting with me and Mr. McLarty to
13 which he was bringing the Treasury's general counsel. And
14 he told me that I should bring whoever else I thought ought
15 to come. He did not -- to the best of my recollection, he
16 did not tell me what he wanted to discuss.

17 Q My question to you earlier was if you know, how
18 did he come to call you about the subject of this meeting?

19 A You'll have to ask Mr. Altman. I don't know.

20 Q Have you ever told Mr. Altman that you were the
21 White House person who was dealing with Whitewater issues?

22 A That was a matter of general knowledge in the

1 press as well as otherwise.

2 Q And my question again to you is, had you ever
3 told Mr. Altman that you were the person that was dealing
4 for the White House, coordinating the Whitewater response
5 group?

6 A I may well have. I don't recall a specific
7 discussion with him. I may well have done so.

8 Q Was your purpose in informing Mr. Altman so he
9 would know if any matters came up relating to Whitewater,
10 they should go through you?

11 MR. BENNETT: If he did that.

12 BY MR. CODINHA:

13 Q If you did that.

14 A If I did that, I don't recall that as being a
15 purpose. It was a matter of general knowledge in the press
16 that I was doing that.

17 Q Did you routinely tell people that you were
18 talking to, that that was one of the matters that you were
19 responsible for?

20 A No. The people asked me what I was responsible
21 for and members of the press did on regular occasions. I
22 would respond in the affirmative to that. And as I say, it

106

1 was general knowledge fairly early on that that was one of
2 my responsibilities and was discussed fairly widely in the
3 press.

4 Q Now, in this call that came a day or two before
5 the February 2nd meeting, how long did that call last?

6 A I would say less than a minute.

7 Q When Mr. Altman said he wanted to have a meeting,
8 did he tell you what the subject matter of the meeting was?

9 A He did not. To the best of my recollection, he
10 did not.

11 Q When he told you to -- did he ask you if
12 Mr. McLarty could attend?

13 A He told me he wanted a meeting with me and
14 Mr. McLarty.

15 Q And he told you that the general counsel from the
16 Treasury was going to attend?

17 A That's my best recollection.

18 Q And he told you to bring over whoever else you
19 thought ought to come; is that right?

20 A That's my recollection of the conversation, yes.

21 Q Who did you tell should come to this meeting?

22 A I'm not sure about your question. Are you asking

1 me who did I ask to come to the meeting?

2 Q Yes, who did you ask to come to the meeting? If
3 I was inartful, I apologize.

4 A No, I didn't think you were being inartful. I'm
5 trying to get the question.

6 Q Who did you ask?

7 A Mr. McLarty, and when I was on the phone with
8 Mr. McLarty, I told him since Mr. Altman was bringing the
9 general counsel to the Treasury, I thought it was to have
10 the general counsel of the White House attend and
11 Mr. McLarty agreed and he asked me to call Mr. Nussbaum. I
12 don't know whether I called Mr. Nussbaum or whether my
13 assistant called Mr. Nussbaum, but as I recall, I undertook
14 to call him and notify him of the meeting and asked him to
15 be there.

16 Q And who else did you suggest attend?

17 A To the best of my recollection, those were the
18 only people -- he was the only other people I suggested
19 attend.

20 Q And at a later point, did you suggest that other
21 people attend?

22 A Not to my recollection. I'm not saying I didn't,

108

1 but as I sit here today, I don't recall that I suggested
2 others attend.

3 Q Where was the meeting to occur?

4 A I asked McLarty where he wanted it, and he
5 suggested his office.

6 Q Mr. McLarty at that point was the chief of staff
7 of the White House?

8 A He was.

9 Q And you were the deputy chief of staff?

10 A I was a deputy.

11 Q I'm sorry. You did say there was another one.
12 And the counsel to the president, Mr. Nussbaum, was being
13 asked to attend?

14 A He was.

15 Q Did Mr. McLarty ask you what this was all about?

16 A He may have. I don't recall whether he did or
17 whether he didn't. I mean, Mr. Altman is a very
18 high-ranking member of the federal administration and was
19 in fairly regular contact with the White House. Mack
20 probably did. I don't recall that he did.

21 Q When you spoke to Mr. Altman a day or two before
22 the meeting, the February 2nd meeting, did you ask him what

●

1 the meeting was going to be about?

2 A I don't recall that I did. He said he wanted a
3 meeting. I knew who he was. He was a person who was well
4 regarded in the White House, and it was something that I
5 would accede to. I don't think that I asked the nature of
6 what he wanted to discuss.

7 Q Would it be unusual for you to schedule such a
8 meeting without asking the subject matter of the meeting?

9 A Not necessarily unusual, but when someone like
10 Roger Altman, who is a valued advisor as well as a
11 high-ranking official in the Treasury, asks for a meeting,
12 I take it seriously. Mr. McLarty, I think, took it
13 seriously. He didn't indicate it would be a prolonged
14 meeting and we just set it up.

15 Q Did you believe you were going to have to do any
16 preparation before the meeting occurred?

17 A I didn't believe I did and I didn't.

18 Q Before you called Mr. Nussbaum to come to the
19 meeting, you or a member of your staff asked Mr. Nussbaum
20 to attend the meeting, did you try to advise Mr. Nussbaum
21 what the subject matter of the meeting was so he could
22 prepare?

110

1 A Since I didn't know, I couldn't do the latter.

2 Q Did you consider calling Mr. Altman back before
3 the meeting to determine what the subject matter was going
4 to be so that you or people you were inviting could
5 prepare?

6 A I didn't.

7 Q When did the --

8 MR. BENNETT: You say the people he was
9 inviting. He said he invited Mr. Nussbaum.

10 MR. CODINHA: And McLarty.

11 MR. BENNETT: And McLarty.

12 BY MR. CODINHA:

13 Q And when did the meeting occur?

14 A It occurred -- the date or the time?

15 Q You've already told me it took place on February
16 2nd.

17 A That's the best of my recollection. I think it
18 occurred on the 2nd. My recollection is it occurred in the
19 late afternoon.

20 Q Did you believe that the subject matter of this
21 meeting was going to be some Treasury business that was
22 going to occur?

1 A I don't recall that I had a belief.

2 Q Did you wonder about why Mr. Altman told you he
3 was going to bring the general counsel to the Treasury
4 along with him?

5 A I don't recall. There's a lot of business that
6 goes on. I am typically very pressed for time during the
7 day, and I don't recall having any questions about it. He
8 told me he wanted to bring his general counsel. That's
9 fine with me.

10 Q When he told you he was going to bring his
11 general counsel along, did that make you believe it was
12 going to be some kind of business that was being discussed?

13 A When you refer to -- when you use the term
14 "business," I'm not sure what you mean.

15 Q You said that Mr. Altman was a regular visitor at
16 the White House, that he was certainly there on health care
17 matters. I believe you said he was there on Treasury
18 business --

19 A I don't know that as a fact. I assume he was
20 there on Treasury matters.

21 Q When he came to the White House on health care
22 matters, did he bring his lawyer along?

1 A He did not.

2 Q Did he come -- on other matters when you had seen
3 him at the White House, did you see his lawyer along?

4 A I had no idea who he brought. I saw Roger in the
5 hallways on numerous occasions. I don't know who he
6 brought with him nor did I inquire.

7 Q Did it cause any curiosity in you when he said he
8 was going to bring his general counsel along?

9 A No. As I say, it's typically, mine as well as
10 others, a very busy day. He asked for a meeting. I knew
11 who he was. I knew that he had confidence in the White
12 House and it was a meeting I took to set up pro forma.

13 MR. BENNETT: Are you tired? Do you want to
14 break?

15 THE WITNESS: No, I'm fine.

16 BY MR. CODINHA:

17 Q When you said you talked to Mr. McLarty and you
18 informed him -- when you informed Mr. McLarty that
19 Mr. Altman was bringing Treasury's lawyer along, it was you
20 who suggested that you have the White House's lawyer
21 present; right?

22 MR. BENNETT: Mr. Codinha, he has testified to

1 this four times.

2 MR. CODINHA: Actually, I don't think it's four
3 times.

4 MR. BENNETT: Four or five times. Can't we move
5 that along.

6 BY MR. CODINHA:

7 Q With respect to the reason you thought that the
8 White House's lawyer should be there, what was in your mind
9 as to why the White House's lawyer should be there?

10 A Because the Treasury's lawyer was going to be
11 there.

12 Q Did you believe that business was going to be
13 discussed that would require the White House's lawyer to be
14 there?

15 A I didn't have the foggiest idea of what business
16 was going to be discussed but it struck me if he was
17 bringing his lawyer, we should have our lawyer.

18 Q Did you go to the meeting on February 2nd?

19 A I did.

20 Q And was it scheduled in your schedule that you
21 would go to the meeting?

22 A As I recall, it was.

1 Q When you arrived at the meeting, do you recall
2 where it occurred?

3 A It occurred in Mr. McLarty's office around his
4 conference table.

5 Q Do you recall who was there when you arrived?

6 A I don't recall whether I arrived before anyone
7 else. I recall that I went into Mr. McLarty's office, that
8 Mr. McLarty was there and I may well have met Mr. Altman
9 and the Treasury's counsel, who I came to learn was
10 Ms. Hanson, on the way in.

11 Typically, when people come in from the outside
12 without a permanent White House pass, which Mr. Altman does
13 not, I think, have, they are -- they wait in the reception
14 room until they are escorted in. But as I went into his
15 office, I recall, I think, going in with Mr. Altman and
16 Ms. Hanson, or who I came to learn was Ms. Hanson. I don't
17 know whether Mr. Nussbaum was in the office when I walked
18 in or not.

19 Q Do you recall that being the first time you ever
20 met Ms. Hanson?

21 A Yes, to the best of my recollection, I had never
22 met her nor did I know who she was.

1 Q Was she introduced to you at that time?

2 A She was.

3 Q Who else attended the meeting?

4 A The best of my recollection, although McLarty was
5 in the meeting, he didn't attend it. It was myself,
6 Altman, Hanson, Nussbaum; Neil Eggleston, as I recall, was
7 there. It's my recollection that Ms. Williams attended,
8 but I think she came in after the meeting was underway.
9 There may have been others. I don't recall anybody else at
10 the meeting.

11 Q You expected Mr. Altman to be there. That's
12 correct?

13 A Yes.

14 Q You expected his general counsel, who it turned
15 out was Ms. Hanson, to be there?

16 A Yes.

17 Q You expected Mr. Nussbaum to be there?

18 A I did.

19 Q Did you expect that Mr. Eggleston was going to be
20 there?

21 A I had no expectation of him.

22 Q Ms. Williams is not an attorney, is she?

1 A Not to my knowledge.

2 Q Do you have any idea, as we sit here today, why
3 Ms. Williams was at the meeting?

4 A Well, as the meeting unfolded, yes.

5 Q And what was her reason for being at the meeting?

6 A Well, you'll have to ask her.

7 Q I just asked you if you knew, and I'm now asking
8 you what is your understanding of the reason Ms. Williams
9 was at the meeting?

10 A It was a matter dealing -- as it turned out, it
11 was a matter that Mr. Altman wanted to discuss, and did
12 discuss, what I understood to be an inquiry being conducted
13 by the RTC general counsel as to whether there was a basis
14 for a civil claim against persons or parties involved in
15 Whitewater/Madison. And since that was a matter -- not
16 necessarily that civil claim but since Whitewater/Madison
17 was an issue of considerable -- still at that time a
18 considerable press inquiry, it didn't surprise me that
19 Ms. Williams was there.

20 Q Before you walked in to the meeting, you did not
21 know what the subject matter of the meeting was going to
22 be?

1 A Not to my recollection.

2 Q Did anyone else, to your knowledge, know what the
3 subject matter of the meeting was going to be before the
4 meeting began?

5 A Not that I knew of.

6 MR. BENNETT: Other than Altman.

7 MR. CODINHA: Other than Altman and perhaps
8 Hanson. And when I say "anyone," I'm talking about anyone
9 from the White House.

10 MR. BENNETT: I just want the record to be clear.

11 THE WITNESS: That's how I took your question.

12 BY MR. CODINHA:

13 Q Do you know who had alerted Ms. Williams that
14 Mr. Altman was going to be at the White House?

15 A I do not know.

16 Q Do you know how Ms. Williams came to be at the
17 meeting?

18 A I don't know.

19 Q This was a by-invitation-meeting only, wasn't it?

20 A Yes.

21 Q And do you know who invited Ms. Williams to
22 attend that meeting?

1 A I don't recall.

2 Q Was anyone assigned the task of taking notes at
3 the meeting?

4 A No.

5 Q Did anyone take notes at the meeting?

6 A As I recall, people did take notes.

7 Q Who do you recall taking notes?

8 A I did. I think Eggleston may have and I recall
9 Hanson taking notes. I don't know whether others did or
10 not.

11 Q As best you can now recall, what occurred at the
12 meeting? Who said what to whom?

13 A Well, I don't recall who said what to whom. I
14 can convey to you the gist of the meeting, and the gist of
15 the meeting, as best I can recall, was Mr. Altman discussed
16 the issue of the -- what I understood to be an inquiry
17 being conducted by the general counsel of RTC as to whether
18 or not there was the basis for a civil claim against any
19 persons or parties in connection with Madison/Whitewater.

20 And it was my understanding, based on his
21 description, that there was a statute of limitations with
22 respect to any such claims, and that that statute of

1 limitations was about to expire. And he raised that issue
2 and there were a number of questions about it.

3 I, for one, had little knowledge, if any
4 knowledge, about the situation. I, among others, asked him
5 a number of questions about the details of the statute of
6 limitations and to some extent, the progress of the inquiry
7 being conducted by the RTC. That was the bulk of the
8 meeting.

9 Towards the very latter part of the meeting, he
10 raised the issue that he said he was considering whether or
11 not to recuse himself in connection with that matter. It
12 was during that meeting that I, to the best of my
13 recollection, learned of Mr. Altman's position with respect
14 to the RTC.

15 Q Have you completed your answer?

16 A Yes.

17 MR. BENNETT: He has turned over his notes to the
18 meeting so that may help refresh his recollection if you
19 think there's anything more.

20 BY MR. CODINHA:

21 Q With respect to Mr. Altman's statement, did
22 Mr. Altman begin talking at the meeting? Was he the one

1 who began the meeting?

2 A Yes, he was the one who asked for the meeting. I
3 was in the dark as to what he wanted to discuss and he
4 basically opened up the meeting.

5 Q And did he say I want to discuss the procedures
6 that the RTC is -- words to the effect that I want to
7 discuss the procedures the RTC is going to follow as they
8 apply to the statute of limitations?

9 A I don't recall exactly what he said. He did --
10 the gist of what he said is that he wanted to discuss the
11 inquiry being conducted by the RTC's general counsel and
12 the application of the soon-to-expire statute of
13 limitations to that investigation.

14 Q If you can recall, what did he say that he wanted
15 to discuss about the inquiry that was being conducted by
16 the RTC's general counsel?

17 A Would you repeat that.

18 MR. CODINHA: Would you read it back, please.
19 (The reporter read the record as requested.)

20 THE WITNESS: He did not -- it's my recollection
21 that he did not go into the substance of the inquiry
22 itself. What he discussed was there was an inquiry

1 underway, that it was his view, based on information from
2 his sources -- I don't think he delineated them, but I
3 assumed one of them was the general counsel of the RTC --
4 that that investigation was going to take a longer period
5 of time to conclude and that it might not conclude until
6 after the expiration of the statute of limitations.

7 BY MR. CODINHA:

8 Q Did he indicate the steps that the RTC was taking
9 in their inquiry to make a determination that -- strike
10 that.

11 Did Mr. Altman discuss the steps that the RTC was
12 taking to get the information that they would need in order
13 to make a determination on the statute of limitations.

14 MR. BENNETT: I'm going to ask, in fairness to
15 the witness, if what your objective is is to find out what
16 happened, if you could show him his notes, which were taken
17 in real time. I mean, if you want an accurate -- rather
18 than him guessing years later.

19 MR. CODINHA: Years later?

20 MR. BENNETT: Not years later. Months and
21 months. The point is the most accurate record is his
22 contemporaneous notes, so we don't get into a guessing

1 game, I'd ask you to show him his notes.

2 BY MR. CODINHA:

3 Q Mr. Ickes, as best you recall, what was said
4 about that subject?

5 MR. BENNETT: Go ahead. Guess. Do your best.

6 THE WITNESS: I think I've given you the gist of
7 it. I can't recall word for word who said what to whom,
8 but the gist of it was as I just recounted it. He wanted
9 to inform us, "us" being people from the White House, as to
10 the status of that investigation from a procedural time
11 point of view. He did not go into detail -- as I recall,
12 he did not go into any detail about the substance of it.
13 It was my impression and impression only he didn't know a
14 lot about the substance of anything.

15 The purpose of this meeting and the focus of his
16 discussion was the relationship of the time that he felt
17 this investigation might be wrapped up and he said, at
18 least in so many words, that it was his understanding that
19 the investigation probably would not be concluded and that
20 a determination could not be made by the RTC's general
21 counsel as to whether there was a basis for a civil claim
22 until after the expiration of the statute of limitations

1 had applied to that particular investigation.

2 I recall that he said that the statute began
3 running from the time RTC took over Madison Guaranty.
4 Again, this is what I recall, and I recall that -- all this
5 was new to me. I recall his saying that the statute, as
6 applied to that investigation or at least to that matter,
7 bringing a civil claim, had been expired, had been renewed
8 and made retroactive for a five-year period and was about
9 to expire, I think, the end of March or somewhere along
10 that line.

11 BY MR. CODINHA:

12 Q When you heard Mr. Altman say that the
13 investigation of the RTC probably couldn't be concluded to
14 the satisfaction of the general counsel of the RTC before
15 the statute had run, had you ever heard that piece of
16 information before?

17 A I do not recall. As I said before, this was all
18 very new to me. I think it was at that meeting that I
19 first learned of Roger's relationship to RTC, of Bentsen's
20 relationship to RTC, of the RTC oversight board, and I knew
21 nothing about the structure, and to the best of my
22 recollection, I don't think that -- I do recall there being

1 a D'Amato countdown, but I certainly didn't know the
2 intricacies that he explained that day.

3 Q With respect to the information that the inquiry
4 could probably not be wrapped up to the general counsel's
5 satisfaction, the inquiry about Madison could not be
6 wrapped up to the general counsel's satisfaction before the
7 statute of limitations ran, as far as you knew, was that
8 public knowledge when he said it?

9 A I don't know whether it was public knowledge or
10 not. I assumed that it was -- when you say "public," did
11 the public in general, I didn't think it was. I didn't
12 know whether it was, but it was my assumption that this was
13 information that was not known to the public in general and
14 probably very few people inside the administration.

15 Q Did you believe that that piece of information
16 was known to the parties to the litigation, the other side
17 of the case, the people not on the government side of
18 Madison but on the other side of the Madison investigation?

19 A It wasn't my impression that there was any
20 litigation that had been instituted. It was my
21 understanding what they wanted to do was to preserve the
22 right to initiate litigation. It was not my understanding

1 that there was any litigation underway with respect to this
2 particular issue.

3 Q I'm sorry, potential litigation. Was it your
4 understanding that those people were on the other side of
5 the potential litigation?

6 MR. BENNETT: You mean without regard to what
7 would have been said on the floor of the Senate?

8 MR. CODINHA: I'm saying that the fact that
9 Mr. Altman disclosed at this meeting that the RTC general
10 counsel's office was not going to be in a position to
11 decide whether or not they had enough information until
12 after the statute of limitations had run.

13 MR. BENNETT: I see. I'm sorry.

14 BY MR. CODINHA:

15 Q And that's the focus of my question to you now.
16 As far as you know, was that information given to
17 the other side? Had that information been given to the
18 other side, the potential other side.

19 MR. BENNETT: "The other side" being --

20 MR. CODINHA: Whoever was going to be involved on
21 the opposite side of the Madison case from the RTC.

22 THE WITNESS: I had no idea who had been involved

1 on the other side. A lot of people have been involved in
2 Madison and RTC matters.

3 BY MR. CODINHA:

4 Q You are an attorney. Although I haven't seen
5 your resume, you are an attorney, are you not?

6 A I am.

7 Q Do you think the fact of knowing that one side is
8 not going to be able to have enough information to act
9 before the statute of limitation runs is an important piece
10 of information to be conveyed to the other side?

11 MR. BENNETT: I'm going to object. He's not here
12 in his capacity to give you legal opinions, so I'm going to
13 instruct him to not be opining on what is good lawyering or
14 not good lawyering.

15 MR. CODINHA: I'm not asking him to opine other
16 than what he thought at the time.

17 MR. BENNETT: I'm going to tell him not to give
18 his legal opinion or legal judgment. I think we should
19 focus on section A of the resolution.

20 BY MR. CODINHA:

21 Q Did you understand Ms. Williams was the chief of
22 staff to Hillary Clinton as she sat there in that room?

1 A Was she?

2 Q Did you understand she was?

3 A I knew she was.

4 Q Did you understand that she reported to Hillary
5 Clinton, as chief of staff that she reported directly to
6 Hillary Clinton?

7 A That's my understanding.

8 Q Was there any suggestion at that meeting that the
9 information that was being received was being received in
10 any kind of confidential fashion?

11 A I do not think Mr. Altman referred to
12 confidentiality during these discussions.

13 Q Did you understand that it was likely that
14 Ms. Williams would report the information that she had
15 determined to her superiors?

16 A I had no understanding in that regard.

17 Q Did you understand that she shouldn't report that
18 information to her superior?

19 A I had no understanding in that regard.

20 Q I think you also said that you had raised a
21 question during Mr. Altman's presentation about the
22 progress of the inquiry that was being conducted by the

128

1 RTC. What do you recall asking Mr. Altman about the
2 progress of the inquiry that was being conducted by the
3 RTC?

4 A As I recall, my questions were procedural and not
5 substantive.

6 Q What were the procedural questions you asked?

7 A I just wanted to get a sense from him as to how
8 long he thought it was going to take for the general
9 counsel to wrap up the investigation and to make a
10 determination -- or I guess it was a recommendation. I
11 think that's the phrase that Mr. Altman used, that general
12 counsel would make a recommendation as to what action, if
13 any, should be taken based on the investigation.

14 And basically, I was trying to get a sense from
15 him, because this was pretty new to me, as to his best
16 estimate of when that investigation would be concluded and
17 a recommendation could be made because as I understood it,
18 general counsel made a recommendation and that
19 recommendation was then moved up the chain in the RTC to
20 determine whether or not the recommendation would be acted
21 upon.

22 Q What did Mr. Altman respond to you about the time

1 that it would take the general counsel to make her
2 recommendation?

3 A He was imprecise. I don't think he had a
4 specific time -- the general information from Mr. Altman
5 was based on what he knew, that it was unlikely that the
6 investigation could be completed and a recommendation made
7 by the general counsel prior to the expiration of the
8 statute of limitations.

9 Q What did Mr. Altman say as to -- I believe you
10 just said that general counsel would make a recommendation
11 as to what action would be taken, and it would begin moving
12 up the line or up the chain.

13 What did Mr. Altman say was going to be the
14 movement up the chain?

15 A I don't think he went into particular detail. It
16 was my understanding that the general counsel -- again, as
17 I sit here today, I recall the general gist of Altman's
18 presentation was in response to questions, I think probably
19 more appropriately, that the general counsel did not have
20 the authority to bring or initiate a civil claim absent
21 approval by higher authority within the RTC structure.

22 Q What did Mr. Altman say about that, if you can

1 recall?

2 A I think I've given you the gist, and I can't
3 recall his exact words, but that's certainly the gist, as I
4 recall it.

5 Q And when he said that, was there inquiry about
6 who was further up the chain who would be making that
7 decision?

8 A I recall the name of a guy by the name of Jack
9 Ryan. I don't know what position or title he held. I came
10 away with the impression that he was certainly above the
11 general counsel's office, and ultimately, I think it would
12 come up to Mr. Altman who was then acting president or
13 chairman, whatever his title was, of the RTC, by virtue of
14 the RTC statute.

15 Q As you recall, is that what Mr. Altman said at
16 the meeting?

17 A That was the gist of what he said.

18 Q Do you recall Mr. Altman told you at the meeting
19 the name of the general counsel?

20 A I think it was Mr. Altman. I know her name was
21 raised by either Altman or somebody else, and my
22 recollection is it was a woman by the name of Ellen Kulka,

1 K-u-l-k-a, I think.

2 Q What, if anything, did Mr. Altman say about Ellen
3 Kulka, other than she was general counsel?

4 A Basically she was general counsel.

5 Q What was said about Jack Ryan, if anything, at
6 that meeting?

7 A I think Mr. Altman -- I'm not sure whether it was
8 Mr. Altman -- reference was made that both of them had
9 worked, I think, previously at the Office of Thrift
10 Supervision, the agency I had never heard of until that
11 meeting, that Mr. Ryan had worked at the office of OTS and
12 it was my impression that he was, from a structural and
13 authoritative point of view, above the general counsel's
14 office.

15 I couldn't tell you what position he held or what
16 the relationships were. It was my sense that he was
17 somewhere between Altman and general counsel, at least with
18 respect to this investigation and possible determination of
19 the general counsel.

20 Q After Mr. Altman talked about that, you said, I
21 believe Mr. Altman said he was considering recusal and that
22 was the first time you learned of Mr. Altman's position

1 within the RTC. What did Mr. Altman say about recusal?

2 A The gist of what he said, and this came towards
3 the very latter part of the meeting and was -- I think the
4 bulk of the meeting was taken up with his presentation and
5 our questions and his answers and discussion about the
6 investigation and its relationship to the statute of
7 limitations.

8 Towards the latter part of the meeting he brought
9 up that he was considering recusing himself in connection
10 with this matter and as I recall, it was because he, as the
11 acting chairman or the president, would ultimately have to
12 determine whether or not to implement a recommendation, if
13 any, made by the general counsel's office with respect to
14 this investigation.

15 Q Did he go on to explain at that time what he
16 thought the reasons for recusing himself were?

17 A There were questions along that line, both from
18 myself, Mr. Nussbaum and I think others to determine the
19 basis and as I recall, the gist of his basis was that he
20 was -- had a long and well-known friendship with the
21 president and that he was considering recusing himself to
22 eliminate any possible conflict or appearance of conflict.

1 Q Do you recall Mr. Altman reading his position
2 from talking points?

3 A Position with respect to what?

4 Q With respect to what he was telling you. Do you
5 recall him using talking points at that meeting?

6 A Telling us in general or telling us with respect
7 to recusal?

8 Q Either one.

9 A I recall that he had a sheet of paper in front of
10 him. He appeared from time to time to be looking at it
11 during his presentations. He sometimes referred to his
12 general counsel as well. I don't know whether anything was
13 typed or written on a piece of paper. I couldn't see it
14 from that perspective, but I assume he was because he
15 seemed to refer to it from time to time.

16 Q With respect to your questioning of Mr. Altman
17 about why he felt he should recuse himself, what did you
18 say, if you can recall?

19 A The gist of what I said was Roger, why do you
20 think you should recuse yourself, and the gist of his
21 answer is what I recall what I related to you earlier.

22 Q That he had a long and well-known friendship with

1 the president and Mrs. Clinton?

2 A And Mrs. Clinton, and he was considering recusing
3 himself in order to avoid either conflict or the appearance
4 of conflict.

5 Q Do you recall him saying that when he spoke to
6 you, not that he was considering recusing himself but that
7 he had decided to recuse himself?

8 A I do not recall him saying that.

9 Q I'd like to show you Exhibit T153, which is
10 labeled "Talking points for Roger Altman, informational
11 meeting with Mack McLarty, 2/2/94," and I'd like you to
12 read the last bullet. You can read the whole thing but I'm
13 going to ask you about the last bullet.

14 MR. BENNETT: Why don't you read the first bullet
15 and the last bullet.

16 THE WITNESS: This is the first time I've seen
17 this to the best of my recollection. The caption is as you
18 have described. The first bullet is "RTC has been
19 requested by eight Republican senators and Congressman
20 including Dole and Michel to seek tolling agreements from
21 president and Mrs. Clinton, McDougal, David Hale, Jim Guy
22 Tucker, Seth Ward related to Madison Guaranty" --

1 MR. BENNETT: Since you had asked about the other
2 side, I thought you might want that on the record.

3 THE WITNESS: The last bullet, "I have decided I
4 will recuse myself from the decisionmaking process as
5 interim CEO of the RTC because of my relationship with the
6 president and Mrs. Clinton."

7 BY MR. CODINHA:

8 Q Having read that, does that refresh your
9 recollection as to what Mr. Altman said at the meeting?

0 A It does not.

1 Q What do you recall Mr. Nussbaum saying to
2 Mr. Altman with respect to recusal, if anything?

3 A The gist was why do you think you need to recuse
4 yourself, Roger? I don't know whether I said it first or
5 he said it first. The gist of Altman's response was as
6 I've testified to and the gist of Nussbaum's response was
7 that he didn't see a need for recusal on that basis and
8 that was basically my response, but that it was up to Roger
9 to decide whether or not he was going to recuse himself.
0 That was a thumbnail -- that is the gist of what was said
1 with respect to recusal.

2 Q Did you see -- strike that.

1 What, if you can recall, did Ms. Williams say to
2 Mr. Altman with respect to recusal?

3 A I don't recall anything specifically that
4 Ms. Williams said. I think my recollection is that
5 virtually everybody around the table was involved in this
6 discussion and the gist of it was, from anyone who spoke
7 from the White House, they didn't necessarily see a basis
8 for recusing or the necessity of recusing, let's put it
9 that way. But it was at bottom, Mr. Altman's decision
0 whether or not he should recuse himself.

1 Q Do you recall Mr. Altman saying at that meeting
2 that he had been advised by Ms. Hanson who was there with
3 him, the general counsel to the Treasury, that he should
4 recuse himself?

5 A I don't recall him saying that.

6 Q Do you recall Mr. Altman saying at that meeting
7 that he had been advised by the general counsel of the RTC
8 that he should recuse himself?

9 A I don't recall him saying that.

0 Q Do you recall Mr. Altman saying at the meeting
1 that he had been advised by Secretary Bentsen of the
2 Treasury that he should recuse himself?

1 A I don't recall him saying that.

2 MR. BENNETT: May I see that exhibit?

3 THE WITNESS: I'm not saying that he didn't say
4 that. I don't recall, as I sit here today, him saying
5 that.

6 MR. BENNETT: I would note that that doesn't
7 appear to be in his talking points.

8 MR. CODINHA: No.

9 BY MR. CODINHA:

10 Q With respect to -- strike that.

11 How long did this entire meeting last?

12 A I don't recall. I think not longer than 45
13 minutes, in that neighborhood.

14 Q How did the meeting end?

15 A The meeting ended with -- on this subject that
16 we've been discussing with everybody on the White House
17 side who spoke on it, saying that it was whether Altman
18 recused himself or not was up to him and as I recall,
19 Altman saying that he had not made a decision and that he
20 would be making a decision within the next day or so and
21 would be getting back to us. I'm not even sure if the "us"
22 was designated as a particular individual as to his

1 decision.

2 Q When Mr. Nussbaum spoke to Mr. Altman about the
3 subject of recusal, how was the delivery made to
4 Mr. Altman?

5 A In --

6 Q What was the tone of the delivery?

7 A In the normal tone that Bernie uses in general
8 discussions.

9 Q Did Mr. --

10 A Nothing out of the ordinary.

11 MR. BENNETT: Describe to him what Mr. Nussbaum's
12 normal tone is.

13 THE WITNESS: Well, Mr. Nussbaum, in my
14 experience, is -- I guess I would characterize him as a
15 passionate advocate. He urges his beliefs in a fairly
16 assertive way, but that's just his general nature.

17 MR. BENNETT: I didn't want two ships passing in
18 the night.

19 THE WITNESS: There's nothing -- Bernie did
20 not -- his attitude and demeanor was no different than if
21 he were talking to me about just matters in general. There
22 was nothing out of the ordinary for him.

1 BY MR. CODINHA:

2 Q And it was Mr. Nussbaum's position, as he
3 articulated it, that he didn't hear any reason from Altman
4 why he should recuse himself?

5 A As best I can recall, as I have testified before,
6 I think both Mr. Nussbaum and I took the position that we
7 did not -- that the basis which Mr. Altman was advancing
8 for recusal, we didn't see that it necessarily required his
9 recusal, but it was his decision to make and his alone to
10 make.

11 Q Did Mr. Nussbaum raise at that meeting the fact
12 that from the White House's point o. view, recusal as a
13 policy issue would be a bad thing?

14 A I don't recall that, and I don't see how that
15 broad statement could be made since these things, it seems
16 to me -- I'm no expert in conflict of interest and recusal,
17 but it seems to me, based on my limited knowledge, they
18 have to be made on a case-by-case basis. I do think that
19 there was discussion that if everybody who had a friendship
20 with the president were to recuse themselves, there'd be a
21 lot of recusals, but again, it was emphasized clearly by
22 everybody at the table that it was up to Mr. Altman to make

140

1 that determination himself.

2 Q Do you recall, in the context of Mr. Altman
3 saying that he was considering recusing himself, who
4 Mr. Altman would say -- who Mr. Altman said would be in the
5 decisionmaking process at the RTC as it related to Madison?

6 A Again, I don't have a -- my general recollection
7 on this is I think that Jack Ryan would succeed him. I
8 don't know whether as interim CEO, but it was my
9 impression, at least that Jack Ryan, rather than Roger
10 Altman, would be making the final decision on whether or
11 not to implement any determination or recommendation by the
12 RTC's general counsel.

13 Q Do you recall Mr. Altman making a statement at
14 that meeting or making a statement, words to the effect
15 that it didn't matter whether he recused himself anyway
16 because he had already ceded the decision on Madison to
17 lower level people at the RTC?

18 A I don't recall him saying that.

19 Q Is that something you would have recalled if he
20 had said it?

21 A What I do recall Mr. Altman saying is that he
22 fully expected to follow the recommendation of the RTC's

1 general counsel.

2 Q In this case, Ms. Kulka?

3 A Yes, with respect to this matter.

4 Q Do you recall at that meeting Mr. Nussbaum
5 indicating that he knew Ms. Kulka or knew of Ms. Kulka or
6 knew Mr. Ryan or knew of Mr. Ryan?

7 A I recall that Mr. Nussbaum indicated he had known
8 of each prior to this meeting.

9 Q What do you recall Mr. Nussbaum indicating at
10 that -- strike that.

11 What do you recall Mr. Nussbaum saying at that
12 meeting about what he knew about Ms. Kulka?

13 A It was unclear to me. It was my impression,
14 based on Mr. Nussbaum's remarks, that he had dealt with
15 Ms. Kulka in connection with a prior litigation or matter
16 that I think he had held -- he had been handling in private
17 practice before joining the White House. She had been with
18 the Office of Thrift Supervision, as I recall, when he was
19 handling that matter.

20 Q And what did Mr. Nussbaum, as best you can
21 recall, say about Ms. Kulka, as she had been a lawyer for
22 the Office of Thrift Supervision in the case that he had

142

1 dealt with her before?

2 A As I recall, I think Mr. Nussbaum had some
3 question. He didn't raise this to a high level, that I
4 recall but he had some question about her judgment and
5 impartiality.

6 Q Did he say -- when you say he had some question
7 about her judgment and impartiality, what did he say about
8 Ms. Kulka's judgment and impartiality?

9 A All I can recall is that he had some question
10 about it. I don't recall anything else.

11 Q When you say question about her judgment, was it
12 a suggestion that he had a problem with Ms. Kulka's
13 judgment?

14 A I think it's fair to say, as I recall, that he
15 questioned her judgment.

16 Q And in terms of impartiality, would you
17 explain -- as you understood it, what was the question
18 about her impartiality?

19 A It was my impression that he had a question about
20 her impartiality as a result of his relationship to her in
21 the -- it was either litigation or case that I think he was
22 handling in connection with the Office of Thrift

1 Supervision when he was in private practice. I don't
2 recall the details, whether he spelled out details or if he
3 did, what they were.

4 Q Do you recall him talking about the Kaye, Scholer
5 case and how the Office of Thrift Supervision had been
6 unfair in the dealings?

7 A I remember -- yes, you now have refreshed my
8 memory. I think he did mention -- I recall Bernie did
9 represent Kaye, Scholer. I don't know in what connection
10 but as you recall, he did raise Kaye, Scholer's name, a law
11 firm in New York, in that discussion.

12 Q And did he say that the Office of Thrift
13 Supervision had treated Kaye, Scholer unfairly and had
14 brought Kay, Scholer to their knees by the methods they had
15 employed in that litigation?

16 A I don't recall the details of the discussion.
17 Again, I recall his mentioning of Kaye, Scholer and I think
18 it was in regard to his questioning Ms. Kulka's, as I
19 recall, both judgment and impartiality.

20 Q Did you see Mr. Nussbaum have a visceral
21 reaction, a reaction you could see when the name Ellen
22 Kulka was mentioned as being the person who was going to be

1 in charge of the decisionmaking process as it related to
2 Madison?

3 A Well, he certainly raised a question and if you
4 know Mr. Nussbaum, as I said, he's passionate in his
5 presentations, but I want to emphasize he was no more
6 passionate in this discussion than he is in any number of
7 other situations.

8 Q But he was as passionate in this one as he is in
9 any other number of ones?

10 A He was, but Bernie can get passionate about what
11 he chooses off the menu.

12 Q Was it your understanding that Mr. Nussbaum was
13 particularly passionate about the issue of how the Office
14 of Thrift Services had dealt with Kaye, Scholer whom he had
15 represented?

16 A I was under the distinct impression that he was
17 unhappy about it.

18 Q Did he talk about -- strike that. Let me go back
19 to the meeting.

20 When the meeting ended, what did you do after the
21 meeting as it related to Whitewater or Madison, not did you
22 go home for dinner?

1 A I got up and walked out.

2 Q Did any group of people -- strike that.

3 Did Mr. Altman and Ms. Hanson leave the meeting?

4 A Yes. The meeting was over, and as I say, there
5 is a great deal of business. When I left, they left.

6 Mr. McLarty was not around. He did not participate in the
7 meeting and we just dispersed. I don't recall any
8 postmeeting among either White House people or with Altman
9 or Ryan -- I'm sorry, or Hanson.

10 Q Did any group of people remain after the meeting
11 to discuss the events of the meeting, if you can recall?

12 A Not that I recall. I think that we all had other
13 things to go and do, probably running behind time.

14 Q Do you recall at the meeting there being a
15 question raised by Mr. Nussbaum about how Ms. Kulka had
16 gotten her position at RTC?

17 A I don't know whether Nussbaum raised it or not.
18 It's my best recollection that there was some discussion of
19 that. And my recollection is that Altman had either
20 recommended her or had approved her. It was something in
21 connection with his acting status, for lack of a better
22 word, as head of the RTC that he had been involved in her

1 selection and at the very least had approved her
2 selection. But again, it was not a focus of the meeting
3 that I recall. This is just my recollection of my
4 impression of that.

5 Q Of the people who spoke from the White House at
6 the meeting, did anyone suggest that Mr. Altman should
7 recuse himself?

8 A I don't recall anyone saying that he should. I
9 recall, as I've testified before, that at least Bernie
10 Nussbaum and I questioned whether he needed to, but all
11 concerned who spoke on the subject said -- made it very
12 clear that it was up to Roger Altman to make that
13 decision.

14 (Pause.)

15 Q Mr. Ickes, it's my practice, after there's been
16 some form of break, to ask you whether there's anything
17 you'd like to add to the record, expand on the record or
18 make any correction to the record as you sit here now.

19 A No.

20 Q I'd like to now turn your attention to --
21 following the meeting of February 2nd, did you inform your
22 chief of staff, Mr. McLarty, of what had occurred at the

1 meeting?

2 A I don't recall any specific conversation with
3 him, as I sit here today, but I'm confident that I did.

4 Q Do you recall whether you reported what you had
5 learned of the meeting to the President of the United
6 States?

7 MR. BENNETT: I think that's a fair question.

8 THE WITNESS: I wouldn't use the word
9 "reported." I recall having a discussion with him, or
10 during a discussion with him on other matters, informing
11 him about the substance of the conversation. I don't
12 recall when that occurred, whether it occurred shortly
13 after or a number of days or even weeks after, but I recall
14 informing him of the gist of what had occurred.

15 BY MR. CODINHA:

16 Q Do you recall -- did you have occasion to brief
17 the First Lady of the United States about the subject
18 matter of the meeting?

19 A Again, I wouldn't use the word "brief." I recall
20 informing her of the gist of the meeting. Again, I don't
21 know of when or where.

22 Q Following the February 2nd meeting, did you come

148

1 to have another meeting with Mr. Altman shortly thereafter?

2 A On this matter?

3 Q On this matter.

4 A The answer is yes.

5 Q And when did that meeting occur?

6 A It occurred, as I recall, within a day or so
7 following the meeting that we've discussed.

8 Q What were the circumstances under which you met
9 with Mr. Altman?

10 A My best recollection is that it was in the west
11 wing, and I recall it being on the second floor, which is
12 the top floor of the west wing, and my best recollection is
13 it took place in the late afternoon, I think, in connection
14 with one of the 6:00 health care meetings.

15 Q Was this a meeting in which anything related to
16 Whitewater was discussed, Whitewater, Madison or
17 Mr. Altman's recusal issue?

18 A Not that I recall. I think it was as we were
19 about to go in -- my best recollection is it was as we were
20 about to begin or to go into one of the regular 6:00 health
21 care meetings.

22 Q And what was discussed at that time -- strike

1 that.

2 Who was present?

3 A I think that myself, Maggie Williams and Roger
4 Altman were present, and I think the discussion occurred
5 either in the hallway outside of Maggie's west wing office
6 or inside her west wing office. I don't recall where.

7 Q And what do you recall the discussion being? Who
8 said what to whom?

9 A I don't recall the exact words of who said what
10 to whom. The gist of it was -- and it was a very short, in
11 my recollection, less than a minute conversation in which
12 Mr. Altman informed me and if Ms. Williams was there,
13 informed her that he had decided not to recuse himself.

14 Q What response did you make to that, if any?

15 A Other than I've heard you, I don't think any.

16 Q And what response did Ms. Williams make to that,
17 if any?

18 A I don't recall her making any response, but I
19 don't recall what response, if any, she made.

20 Q What do you recall happening next after that
21 meeting?

22 A My recollection is that we proceeded with a

150

1 meeting on health care in Maggie's office.

2 Q Do you recall Ms. Hanson coming to that second
3 meeting? When I say the "second meeting," I mean the
4 meeting on February 3rd.

5 A It was either February 3rd or in that time
6 period. I recall seeing Ms. Hanson either in the hallway
7 outside of Ms. Williams's second floor or west wing office
8 or in her office, and I recall that being on the same day
9 that Altman told me and Maggie that he had decided not to
10 recuse himself. I recall seeing Ms. Hanson in the office,
11 however, earlier than when Mr. Altman told us about his
12 nonrecusal.

13 Q So you saw Ms. Hanson first and it was after that
14 you saw Mr. Altman?

15 A I'm giving you my best recollection. My
16 recollection is I saw Ms. Hanson in there around noon or
17 shortly afternoon, and I recall Roger informing us of his
18 decision not to recuse himself late in the afternoon.

19 Q Do you recall having a conversation with
20 Ms. Hanson when you saw her in the west wing?

21 A I do.

22 Q And what do you recall saying to Ms. Hanson and

1 what do you recall she said to you?

2 A Hello. Nice to see you. Good-bye.

3 Q Let me just ask you now, do you recall whether
4 this meeting between you, Ms. Williams and Mr. Altman may
5 have occurred around lunchtime?

6 A It could have. I'm just giving you my best
7 recollection, but I'm not saying it didn't.

8 Q Do you recall that Mr. Altman -- that it wasn't a
9 sit-down meeting, it was a meeting where people were
10 conversing standing up?

11 A I recall that the three of us were conversing
12 standing up.

13 Q That everybody was standing up and conversing?

14 A Yes.

15 Q Do you recall being notified by Ms. Williams in
16 advance of that meeting that Mr. Altman wanted to come over
17 and tell you something?

18 A She may well have. I don't recall.

19 Q Do you recall whether Ms. Williams asked you to
20 come up to her second floor west wing office to be there
21 for this Altman meeting?

22 A She could have. I don't recall it.

1 Q Do you recall that when you saw Ms. Hanson,
2 Ms. Williams was still present?

3 A Yes, she was.

4 Q Do you recall when you talked to Ms. Hanson, you
5 had some discussion about Mr. Altman's recusal decision?

6 A I don't recall it. You know, we could have. My
7 recollection is as I've testified before. I didn't know
8 Ms. Hanson other than meeting her at the February 2nd
9 meeting, and my recollection is that I literally said
10 hello, nice to see you, good-bye. It was a 30-second
11 meeting, if you can characterize that as a meeting.

12 Q Do you recall that when Ms. Hanson came,
13 Mr. Altman had already left?

14 A As I said, it is my best recollection -- I'm not
15 saying that it could not have occurred otherwise -- it's my
16 best recollection that I saw and said hello, nice to see
17 you, good-bye, to Ms. Hanson sometime noon or shortly after
18 noon that day and that the meeting that I described to you
19 with Mr. Altman and Maggie Williams occurred late
20 afternoon. I'm not saying it could not have occurred
21 otherwise, but that's my best recollection.

22 Q Do you recall asking Ms. Hanson when you saw her

1 who else knew about Mr. Altman's consideration that he
2 might or might not recuse himself?

3 A I don't recall discussing with Ms. Hanson at all
4 the recusal situation.

5 Q Do you recall saying to Ms. Hanson it will look
6 bad if people know that Altman was considering recusing
7 himself?

8 A Same answer as before. The answer is I have no
9 recollection of that.

10 Q Do you recall telling Ms. Hanson it would be
11 better if no one knew that Altman was considering recusing
12 himself?

13 A Same answer as before.

14 Q Do you recall Ms. Hanson saying words to the
15 effect that if anybody asked her, she was just going to say
16 that he had decided to recuse himself?

17 A Same answer as before. I have no recollection
18 whatsoever of that.

19 Q Following your discussion with Mr. Altman, do you
20 recall discussing his decision not to recuse himself with
21 anyone else in the White House?

22 A I don't recall any specific discussions. I

1 undoubtedly did.

2 Q Do you recall the discussion of Mr. Altman's
3 decision -- strike that.

4 Do you recall the matters that Mr. Altman had
5 discussed at the February 2nd meeting coming up at the
6 Whitewater response group meetings?

7 A I don't recall any specific discussion. There
8 probably was, but I couldn't pin the time or date or a
9 specific meeting.

10 Q Do you recall whether at some point in February,
11 Mr. Eggleston was asked to prepare a chronology relating to
12 Whitewater and Madison?

13 A Whether he was asked by me?

14 Q Whether he was asked to in general. Did you ever
15 become aware of that?

16 A There were discussions about the need to prepare
17 a chronology, and that was a discussion that was --
18 discussion that was an issue that was referred to from time
19 to time. It was my view that it would be useful to have
20 such a chronology because it was an ever-expanding group of
21 dates, people and circumstances.

22 Q Did you ask Mr. Eggleston to create such a

1 chronology?

2 A I may have. I don't recall specifically, but I
3 may have. I recall at the time that -- or during that
4 whole period, that it would be a useful document to have so
5 everybody could have reference to it.

6 Q Was such a chronology ever prepared, if you know?

7 A I don't think that such a chronology was ever
8 prepared.

9 Q Do you know a reason why, if you believed one was
10 necessary, one wasn't prepared?

11 A I think it was the press of time and the press of
12 inquiries from the press in trying to deal with responses,
13 and the fact that all of us involved in this were
14 responsible for other areas. I myself was working
15 basically from 6:30 in the morning until 8:00 or 10:00 at
16 night, involved in health care and the '94 elections, and
17 while I understand this is the focus of your inquiry, and
18 it was important to the White House, it was not the single
19 factor that any of us were dealing with.

20 So I treated it, I think to the press of time
21 that it was never put together. I'm not sure that one was
22 never put together ultimately but during the time period

156

1 we're discussing now, I do not think one was put together.

2 Q Did you become aware sometime in early to
3 mid-February that the issue of Mr. Altman's recusal or
4 nonrecusal had become moot?

5 A During what time period?

6 Q Early to mid-February from, say, the 8th to the
7 15th time period that the issue of whether he recused
8 himself or not had become moot?

9 A I don't.

10 Q Do you recall hearing that on or about February
11 11th that the statute of limitations had been extended for
12 another few years?

13 A I recall that, and I don't recall either the
14 details or when I learned of it.

15 Q Was that a subject matter that was discussed by
16 the Whitewater response team at one of its meetings?

17 A I'm sure it was. I can't recall when or where.
18 And again, I just want to point out by this time, by the
19 time we're moving into February, the Whitewater response
20 team was meeting on an very irregular basis and there was
21 discussions going on in the White House about whether to
22 have somebody else basically be responsible for managing

1 the press response to Whitewater other than myself.

2 Q Do you recall Roger Altman testifying before the
3 Senate Banking Committee on oversight hearings on February
4 24th? Do you recall learning of that?

5 A Yes.

6 Q Prior to that, did you have any conversations
7 just prior to that -- when I say "just prior," within a few
8 days within the February 24th hearings with Mr. Altman?

9 A I did.

10 Q When do you recall those conversations occurring?

11 A I had one conversation.

12 Q When do you recall that conversation occurring?

13 A It was early evening of the day immediately
14 preceding his testimony before Senate Banking.

15 Q What was the occasion that you had contact with
16 Mr. Altman?

17 A He had called me on the telephone.

18 Q Were you responding to his call or you just
19 answered the phone?

20 A Well, my assistant, Janice Enright, forwarded the
21 call. I was in Stephanopoulos's office -- George and I are
22 in each other's offices several times a day -- and I was in

1 his office and I got a call and his secretary told my
2 assistant, Janice Enright, that I had a call and she said
3 Roger Altman was on the phone and I said put him through.

4 Q When you spoke to Mr. Altman, what did you say to
5 him and what did he say to you?

6 A The gist of what he said was that he informed me
7 that he was going to testify before Senate Banking the next
8 day. I knew that already. He said he was considering
9 recusing himself. During that -- immediately preceding or
10 during that appearance before Senate Banking, he wondered
11 if I had any thoughts on the subject, said that he was
12 going out to a meeting, that he was on his way out to a
13 meeting or dinner -- I forget which -- he expected to be
14 back between 8:30, 9:00, I forget the precise time, and he
15 asked me if I would call him with any thoughts I had on the
16 subject.

17 I asked him -- it was a very short telephone
18 conversation. I asked him whether there had been any
19 change of circumstances following our meeting on
20 February 2nd and his subsequent decision not to recuse
21 himself. He said that there had been no change of
22 circumstances, and I said, offhand, I didn't see a need for

1 him to recuse himself, but I'd think about it and get back
2 to him. It was a very short phone conversation.

3 Q Was there any discussion at that meeting --

4 MR. BENNETT: You mean in that call.

5 BY MR. CODINHA:

6 Q I'm sorry, in that call that the statute of
7 limitations had already been extended on Madison so the
8 issue of recusal might have been moot?

9 A There may well have been. It's unclear to me
10 when you say the issue would have been "moot." If it had
11 been extended, why would it have been moot?

12 Q I'm just asking you whether that conversation
13 took place on the telephone call.

14 A I don't think so. I don't think so but I don't
15 recall it.

16 Q Did you take this call on a speakerphone in
17 Mr. Stephanopoulos's office or was it a direct line --

18 A Direct line. George has two phones in his office
19 and with several lines on it and as I recall, I was seated
20 in a chair by his second phone and I took the phone call
21 there. It was not on a speakerphone.

22 Q Was Mr. Stephanopoulos in his office?

1 A George was there. I was in there talking to him.

2 Q When you finished the phone call with Mr. Altman,
3 did you talk to Mr. Stephanopoulos about the telephone call
4 you just received from Altman?

5 A I did.

6 Q What did you tell Mr. Stephanopoulos about the
7 telephone call?

8 A I relayed the gist of it, as I've stated here.

9 Q Did Mr. Stephanopoulos have a position about what
10 you had discussed with Mr. Altman?

11 A I think his position -- as I recall, his position
12 was the same as mine. If there had been no change of
13 circumstances and neither of us were aware of any change
14 and Mr. Altman had indicated there had not been any change
15 in circumstances, he didn't see the necessity of
16 Mr. Altman's recusal, nor did I, but he said look, it's up
17 to Roger. It's his decision to make.

18 Q Was it your understanding by the time of this
19 telephone call, which you've described as occurring on
20 February 23rd, that there was increasing press clamor from
21 Mr. Altman to recuse himself?

22 A I don't recall. Again, there's so much press and

1 so much discussion that a lot of this has really merged. I
2 don't recall the intensity of the press discussion about
3 that issue at that time.

4 Q Did you watch Mr. Altman testify before the
5 Senate Banking Committee by any chance?

6 A I did not. It was a typically very busy, long
7 day for me and there were a press of other things and I did
8 not watch him.

9 Q Do you recall a telephone call on or about
10 February 25th that was made to Mr. Altman?

11 A I do.

12 Q In which you participated?

13 A In which I participated, yes.

14 Q Who made the phone call?

15 A It was in George's office. He placed the call,
16 George Stephanopoulos, that is.

17 Q Had you planned to make a phone call with
18 Mr. Stephanopoulos?

19 A No.

20 Q What were the circumstances that led up to the
21 phone call?

22 A I had gone up to see George, as I periodically

1 do, or he's down in my office --

2 MR. BENNETT: Keep your voice up.

3 THE WITNESS: I'm sorry. He informed me that he
4 understood that Altman had had a conversation earlier that
5 afternoon with an employee of The New York Times and during
6 the course of that conversation, Mr. Altman had told the
7 employee of the Times that he was either recusing himself
8 or stepping down from the RTC. I forget what technical
9 phrase was used.

10 And I don't recall George telling me the basis or
11 the source of his information, and I suggested that why
12 don't we call Roger to see what, in fact, he had done
13 because there had been some -- as I recall, he had not --
14 he had not recused himself during the Senate Banking
15 hearings and therefore, that information came as a total
16 and complete surprise to me and to George.

17 BY MR. CODINHA:

18 Q When Mr. Stephanopoulos called Mr. Altman, were
19 you on a speakerphone?

20 A We were.

21 Q And what was said -- who said what to whom during
22 this telephone conversation?

1 A Again, I don't recall the exact conversations,
2 but the gist of the conversation was, from my end and
3 George's end, we've heard this, is it true? Altman said
4 that he had had a conversation earlier that afternoon. I
5 think our call was late-ish afternoon to Altman. Our call
6 to Altman was late-ish afternoon, that he had earlier that
7 afternoon had a telephone call with Howell Rains, who is an
8 employee of The New York Times.

9 MR. BENNETT: I'm not sure he would like you to
10 describe it that way.

11 THE WITNESS: That's what I understand.

12 MR. BENNETT: I'm being silly. Sorry.

13 THE WITNESS: During the course of the
14 conversation with Mr. Rains, he, Roger, I think, had been
15 told by Mr. Rains that Mr. Rains was going to write a very
16 stiff editorial criticizing Mr. Altman and Mr. Altman -- I
17 don't know if in response to Mr. Rains's information, but
18 during the course of that conversation with Mr. Rains, told
19 Mr. Rains he was either going to recuse himself or step
20 down as acting CEO of the RTC.

21 George and I expressed great surprise and the
22 great surprise was not that he had recused himself, but the

1 manner in which he had recused himself, that he had not
2 notified anybody in the White House that he was going to do
3 so, that we thought it would have been useful for us to
4 know since we were obviously going to be asked questions
5 about it by the press, and that was basically the gist of
6 it.

7 During the course of that conversation, Roger
8 Altman asked if he should say anything to the president and
9 I think it was George who suggested you might consider
10 writing a letter to the president which he subsequently
11 did, but that was the gist of the conversation as best I
12 recall. It was a fairly short conversation.

13 BY MR. CODINHA:

14 Q Were you able to determine from talking to Altman
15 what new fact he had divined that changed his opinion on
16 recusal?

17 A I think it was his discussion with the employee
18 of The New York Times.

19 Q The fact that an editorial was going to be
20 written in The New York Times was the thing that leaned the
21 balance to recusal?

22 A I don't recall the specific discussion. It was

1 my impression that Altman felt that this would be a way to
2 blunt criticism, at least from The New York Times.

3 Q It would be a way to blunt criticism of Roger
4 Altman from The New York Times?

5 A He didn't indicate that. I think he was
6 concerned about the administration, criticism of the
7 administration.

8 Q Did he indicate by saying that he had gotten --
9 by saying he would recuse himself or step down as CEO, that
10 he had gotten The New York Times to agree they wouldn't
11 write an editorial piece on this issue?

12 A No, he did not.

13 MR. BENNETT: Excuse me. Let him finish his
14 questions before you answer because she has to get them
15 down.

16 THE WITNESS: I'm sorry.

17 BY MR. CODINHA:

18 Q Were you aware before --

19 A Am I answering that question?

20 MR. BENNETT: You just both can't talk at once.

21 THE WITNESS: I agree with you. I don't think I
22 gave a full answer to the question. Would you mind reading

1 it back to me.

2 (The reporter read the record as requested.)

3 THE WITNESS: Let me just fill that answer out.

4 No, he did not, and in fact, it was my impression
5 that the Times was going to write an editorial which they,
6 in fact, did.

7 BY MR. CODINHA:

8 Q Was there any discussion with Mr. Altman or
9 criticism of Mr. Altman for recusing himself to The New
10 York Times because they were going to write an article?

11 A I'm sorry? Say that again.

12 Q Was there any discussion with Mr. Altman or
13 criticism of Mr. Altman that the reason why apparently he
14 was recusing himself was because there was going to be an
15 adverse or stiff editorial by The New York Times?

16 A Not that I recall. The gist and the thrust of
17 the conversation from George Stephanopoulos's and my end
18 was surprise, great surprise at the way he had decided to
19 recuse himself, not the fact he had recused himself. I
20 don't think we -- I don't recall any specific discussion
21 about The New York Times, per se.

22 Q Was anything said in the conversation with

1 Altman, that you were a part of, about the fact that Bill
2 Clinton, the President of the United States, was furious
3 about Altman's recusal?

4 A I don't recall that. I myself had not talked to
5 the president since between when I first learned of it and
6 the phone conversation, which was no more than five
7 minutes. I don't know where the president was that day. I
8 did not know whether George had talked to the president
9 about it or not, so to the best of my recollection, there
10 was no discussion about the president's state of mind, if
11 any, on this subject.

12 MR. BENNETT: May I ask, were you limiting the
13 question to the president being furious about recusal or
14 about the way in which he recused himself?

15 MR. CODINHA: Recusal.

16 BY MR. CODINHA:

17 Q Let me ask the question. Were you aware whether
18 the president was furious -- strike that.

19 Was anything said to Mr. Altman on the phone that
20 the president was furious about the way in which Mr. Altman
21 had recused himself?

22 A No. As I recall, the most that was said -- first

1 of all, I hadn't talked to the president so I had no reason
2 to know what his state of mind would have been or his
3 attitude. I don't recall George telling me anything about
4 the president's attitude, and at most, what I recall him
5 saying was we thought the president would be as surprised
6 as we were in the way it was done, not the fact that he had
7 recused himself.

8 And I think it was in response to that that
9 Altman said what should I do to discuss this with the
10 president, which in my recollection, George suggested he
11 might think about writing him a letter.

12 Q Do you know who Jay Stephens is?

13 A I do now.

14 Q Did you know who Jay Stephens was on or about
15 February 25, 1994?

16 A I don't recall when I first learned about his
17 name and who he was. It was around that time, and it could
18 have been shortly before. It could have been on or about
19 the 25th. It could have been shortly after. I do not
20 recall when I first learned about it. I had never learned
21 of him, however, before that time period.

22 Q Did you understand at or around this time Jay

1 Stephens had been the former United States attorney for the
2 District of Columbia?

3 A I learned that.

4 Q Did you learn at or about this time that he was
5 one of the U.S. attorneys who had been asked to resign when
6 President Clinton came in to office?

7 A It was my understanding that the president had
8 asked all United States attorneys for their resignation and
9 he was one of them and he had been bitterly vocal about it
10 and was considered by many to be a very highly partisan
11 Republican.

12 Q And an outspoken critic of the administration?

13 A That's what I was told.

14 Q Did you become aware at or about the time of
15 February 25th that Mr. Stephens had been hired by the
16 Resolution Trust Corporation to handle the Madison case for
17 the Resolution Trust Corporation?

18 A I did come to learn that. I don't recall when.
19 It was in this time period. Whether before, on or before
20 the 25th or after, I don't recall. But I recall learning
21 that and I recall learning I think it was his firm --
22 Madison, Pillsbury --

1 Q Pillsbury, Madison?

2 A Which I gather is headquartered in San Francisco
3 had been retained through some modified RFP process to
4 assist the general counsel of RTC in conducting its
5 investigation that we've talked about earlier.

6 Q What was your source of information on how that
7 retention had been made?

8 A I don't know. It could have been from Altman.
9 It could have been from people in the White House. It
10 could have been from the general counsel's office. I
11 recall getting that information.

12 Q Did you get it as a request from someone to find
13 out how that had happened?

14 A I don't recall being specifically requested to
15 find out about it. I think I was curious about it and
16 wanted to find out about it, how it had happened.

17 Q Do you recall, in this telephone conversation
18 that you and Mr. Stephanopoulos had with Mr. Altman, a
19 discussion about Jay Stephens occurring?

20 A We could have. As I sit here today, I don't
21 remember a specific discussion, but we may well have,
22 assuming that I knew about it at that time and as I say, I

1 can't place the exact time I learned about Stephens.

2 Q Do you recall there being a discussion with
3 Mr. Altman at that time about whether Mr. Stephens could be
4 gotten rid of as the lawyer that the RTC had hired to
5 handle the case?

6 A At that time meaning on the 25th?

7 Q In this telephone call. I'm asking specifically
8 about the telephone call.

9 A I don't recall that, but as I say, we could have
10 discussed Stephens. I don't recall any discussion about
11 getting rid of him. It was my understanding that his firm
12 had been retained. But again, I want to make clear to you
13 I don't recall when I learned that information.

14 Q Do you remember whether there was any discussion
15 with Mr. Altman on the telephone call with you and
16 Mr. Stephanopoulos about whether Mr. Stephens or his firm
17 could be fired from representing the RTC in representing
18 Madison in this case?

19 A I do not. I do not recall any discussion about
20 that. Again, it was my understanding from the beginning
21 that his firm had been retained and it was nailed down.

22 Q When you say it was your understanding from the

1 beginning, that his firm had been retained from the
2 beginning and it was nailed down, what do you mean by the
3 phrase "it was nailed down"?

4 A Whatever arrangements had been made, whatever
5 factual arrangements had been made between his firm and the
6 RTC were in place.

7 Q Who told you that?

8 A I can't recall. I really don't know.

9 Q Did you understand there were contractual
10 arrangements, there was some kind of written agreement?

11 A No, I didn't understand there was a written
12 agreement per se but -- that the situation was no longer
13 whether RTC was considering retaining him, that the
14 retention had been consummated.

15 Q Do you recall discussing that subject with
16 Mr. Stephanopoulos?

17 A I'm sure I did. I don't recall when, but I'm
18 sure did I.

19 Q Do you recall Mr. Stephanopoulos being angry
20 about the subject that the RTC had retained Jay Stephens,
21 an outspoken critic of Mr. Clinton and the White House, to
22 investigate the Madison case?

1 A I wouldn't use the word "angry." I think that
2 those of us who were focusing on this, including myself,
3 were very concerned because of his highly partisan and
4 outspoken and critical attitude towards the administration.

5 Q How did you show your concern?

6 A I expressed it to George and to others in the
7 administration. It was my understanding that there was
8 nothing that could be done about it. The firm had been
9 retained, and that was it.

10 MR. BENNETT: To put that in context, now that
11 he's absolutely furious, he has to spend Sunday here and
12 right now he's absolutely furious.

13 BY MR. CODINHA:

14 Q What was Mr. Stephanopoulos's response to the
15 fact that Mr. Stephens had been hired?

16 A As I've testified before, very concerned, as was
17 I, very concerned.

18 Q How did he manifest his concern?

19 A He said he was concerned.

20 Q Did he yell?

21 A George does not yell. He's the opposite of
22 Bernie.

1 Q Did he throw anything around the room?

2 A George Stephanopoulos, that is not his demeanor.
3 That is not how he acts. He's a very low-key,
4 even-tempered, calm, cool and collected individual. He
5 doesn't yell and scream and throw things around the room.

6 Q Have you seen Mr. Stephanopoulos blow off steam?

7 A Yes. I remember he and I walking down
8 Independence Avenue in a snowstorm once and we couldn't get
9 a cab, and he was angry we couldn't get a cab. The fact is
10 George was concerned. I was concerned and others were
11 concerned, as I said, because of the highly partisan nature
12 of Mr. Stephens, at least that's been described to me and I
13 gather was the general understanding among people who knew
14 of him or about him.

15 Q Did Mr. Stephanopoulos indicate to you that he
16 had called, prior to this telephone call or after this
17 telephone call, that he had called Josh Steiner at the
18 Treasury Department?

19 A He did not. I don't recall him talking to me
20 about -- let's back up. Call Josh Steiner about what?

21 Q About the subject of both Mr. Altman's recusal
22 and Mr. Stephens's hiring.

1 A I don't recall George telling me about any
2 conversation he had had with Steiner on that subject. I
3 mean, he may well have, but as I sit here today, I don't
4 recall.

5 Q Let me ask you about either one of them. Do you
6 recall Mr. Stephanopoulos telling you he had called
7 Mr. Steiner either before or after this Altman telephone
8 call about the subject of recusal?

9 A As I've testified before, I don't recall his
10 telling me the basis of his knowledge about the recusal and
11 therefore, I don't have a recollection of his telling me
12 that he had talked to Steiner before he, George and I
13 called Altman. I'm not saying he didn't do that. I don't
14 have a recollection of it.

15 Q Did Mr. Stephanopoulos tell you he had, either
16 before or after the telephone call in which he
17 participated, say that he had called Mr. Steiner about the
18 subject of Mr. Stephens's hiring by the RTC?

19 A I don't recall his telling me about any
20 conversation he had with Steiner about Stephens.

21 Q It has been widely reported in the media that
22 Mr. Stephanopoulos did have a conversation with Mr. Steiner

1 about these subjects and that Mr. Stephanopoulos has said
2 that he blew off steam or words to that effect in the
3 media.

4 Have you had any conversations with
5 Mr. Stephanopoulos since that time about any conversation
6 he might have had with Mr. Steiner on these subjects?

7 A Well, as I recall, it was the subject of a Time
8 magazine front page, front cover article I think several
9 weeks -- two weeks, three weeks, I don't recall the exact
10 date of that, in which the photographs and pictures of the
11 president and Stephanopoulos were on there. George and I
12 were the subject of or part of the subjects of the articles
13 about this whole thing. So the answer is yes, I was aware
14 of that.

15 Q Did you have conversations with
16 Mr. Stephanopoulos about that subject?

17 A I think I recall talking to him, having several
18 conversations with him about the pending Time magazine
19 article.

20 Q And what did Mr. Stephanopoulos tell you about
21 the conversation?

22 A I don't think -- I didn't go into much detail

1 about it. I think as I recall, he may have told me that he
 2 talked to Josh Steiner. I didn't know who Josh -- I knew
 3 who he was, but I don't think I ever met him, and I don't
 4 think he -- I don't recall him characterizing his
 5 discussions with Steiner. I think he did tell me he had
 6 raised a concern about Jay Stephens, which was in the
 7 ordinary course as far as we were concerned. We were all
 8 concerned about Stephens.

9 Q At or around the time of these telephone calls of
 10 February 25th, do you recall there being discussions in the
 11 White House about having Jay Stephens or Jay Stephens's
 12 firm fired?

13 A Discussions that I was party to?

14 Q Yes.

15 A No.

16 Q Were you present when such discussions were had?

17 A Not that I recall. My very distinct impression
 18 was that his firm had been hired and that they were going
 19 forward. I don't even know when the firm had been hired.
 20 It was my understanding they had been hired or retained
 21 sometime in the past. There were certainly great
 22 expressions of concern around the White House by a number

1 of different people. I don't recall any specific
 2 discussions about trying to get the firm unretained.

3 Q Do you recall there being discussions that
 4 someone ought to find out whether it was a done deal in
 5 terms of them being retained or whether it was still in
 6 play and something could be done?

7 A It was my impression that nothing could be done,
 8 that it was not in play. As I testified before, I'm sure
 9 there were people who raised that as a question. I don't
 10 remember any specific conversations about it or any
 11 details. I would be surprised if there weren't such
 12 discussions or at least questions.

13 Q When you wanted to determine what the process was
 14 for the hiring of Jay Stephens or Jay Stephens's firm, how
 15 did you attempt to find that information out?

16 A As I said, I've testified to that before.

17 Q Do you remember what steps you took?

18 A I think I've testified before, I talked to -- I
 19 probably talked to -- I may have talked to Altman although
 20 I don't recall a specific discussion with Altman. And I
 21 probably talked to either Bernie Nussbaum or other people
 22 in the counsel's office who may have had more information

1 on that than I, but it was my very distinct impression from
2 my inquiries that it was no longer in play, to use your
3 phrase, and that his retention or his firm's retention had
4 been consummated and they were going forward with them.

5 Q After Mr. Altman testified on February 24th, do
6 you recall any occasion on which you reviewed his
7 testimony?

8 A I think that I was sent a transcript of his
9 testimony, and I do not think I read the whole thing.

10 Q Do you recall who sent you a transcript of his
11 testimony?

12 A I don't. As I recall, I think Neil Eggleston
13 from the counsel's office had been monitoring the hearing.
14 He may have sent it to me. It may have been the
15 legislative office -- our legislative office, which is
16 headed by Pat Griffin, who also monitors congressional
17 matters that pertain -- if the White House has interest in
18 and they often get transcripts. It may have been sent down
19 as a matter of routine which stuff like that was sent to my
20 office.

21 Q For what purpose was it sent to your office, if
22 you know?

1 A Basically a matter of routine. Griffin knew
2 that -- and people in his office, the legislative office
3 knew that I was particularly involved with
4 Madison/Whitewater matters and as a matter of routine they
5 would send it down to me. I was also deputy chief of
6 staff. They would send a lot of stuff to me.

7 Q When you reviewed the testimony -- did you review
8 any part of the testimony?

9 A I think I reviewed a very small part of it. It's
10 my recollection I had already read press accounts of the
11 pertinent parts of the testimony and it was a fairly
12 lengthy document and given the press of time, I don't think
13 I reviewed it other than maybe looked at the cover page and
14 the first few pages.

15 Q Did you become aware of meetings at the White
16 House that were taking place which related to the accuracy
17 of Mr. Altman's testimony?

18 A I have subsequently become aware of those. At
19 the time -- the answer is I was not aware at the time any
20 such meetings, in fact, occurred, assuming that they did
21 occur, I was not aware of them. I did become aware that
22 Mr. Altman sent two or three or four letters to Senate

1 Banking clarifying certain aspects of his testimony. I
2 received copies of those letters. I was not involved in
3 the drafting of those letters and I don't know who was
4 involved. I assume Treasury people and Altman, but I don't
5 know who beyond that was involved.

6 Q What was the purpose of you receiving copies of
7 those letters, if you know?

8 A Again, I was very involved in Whitewater,
9 although to a much lesser extent during this time period
10 and those things routinely came to my office.

11 Q Did you read them when they came in?

12 A I did.

13 Q Did you discuss them with anyone else as to their
14 accuracy?

15 A I don't think I did. I assumed that they had
16 originated with Altman and Treasury people.

17 Q And these letters were on March 2nd, March 3rd,
18 March 11th, and March 21st or approximately those dates?

19 A Those are your dates.

20 Q Did it surprise you when you received these
21 letters that this expansion of testimony was requiring a
22 letter writing campaign by Mr. Altman?

1 A I wasn't surprised or unsurprised. It's not
2 unusual sometimes for people to review their testimony and
3 make certain clarifications.

4 Q When you read the letters -- when you read the
5 letter of March 2nd, did you read it at or about the time
6 it was sent, if you can recall?

7 A Probably.

8 MR. BENNETT: Don't guess. Don't guess.

9 THE WITNESS: There's always some delay when
10 stuff circulates through the White House system. I don't
11 know when I received that letter. I recall receiving three
12 or four letters. It was my understanding that I received
13 all of the letters that was sent out. They were also
14 fairly widely reported in the news media, as I recall.

15 BY MR. CODINHA:

16 Q Do you recall, when you read the letter of March
17 2nd of 1994, whether you believed it was accurate when you
18 read it?

19 A You'd have to let me look at the letter.

20 Q I didn't mean to hold it from you. I'm looking
21 at page 336 of the hearing before the Committee on Banking,
22 Housing and Urban Affairs, United States Senate, which was

1 held on February 24, 1994 and page 336.

2 (Witness conferred with counsel.)

3 A What's your question?

4 Q My question is when you read that letter which
5 appears on page 336 at or about the time it was sent, did
6 you believe it was accurate?

7 A Well, I don't know what was in his knowledge or
8 not in his knowledge. I had no reason to believe it was
9 not -- as I recall, I had no reason to believe it was not
10 accurate.

11 Q I'd like to turn your attention to page 337, the
12 letter of March 3rd, 1994. I'd like you to read that.

13 A I had no reason to believe that it was incorrect.

14 Q My term actually was whether it was accurate or
15 inaccurate. Did you believe it was accurate?

16 (Witness conferred with counsel.)

17 A I think I've testified before that there was no
18 discussion, as I recall, no discussion of the substance of
19 the civil investigation, and I had no reason to believe
20 that that letter was inaccurate.

21 Q I'd like to show you the letter on page 338 of
22 March 11, 1994. Would you read that.

1 A The March 11th letter?

2 Q The March 11th letter, yes.

3 A I think I've testified -- my testimony is
4 consistent with that letter. I had no reason to believe --
5 I think that letter is accurate.

6 MR. BENNETT: Harold, keep up your voice, please.

7 THE WITNESS: My prior testimony, I think, is
8 consistent with that letter. When we discussed the
9 meeting -- the short meeting that I had, and maybe Maggie
10 Williams, with Altman and I had no reason to believe -- I
11 think that letter is accurate.

12 BY MR. CODINHA:

13 Q And I'd like to ask you about the letter which
14 appears on page 339, the letter of March 21, 1994 and I'd
15 ask you the same question. Do you believe that letter is
16 accurate?

17 MR. BENNETT: When you say "accurate," the
18 essence of the letter?

19 MR. CODINHA: No, the information contained in
20 the letter, is it accurate?

21 MR. BENNETT: Do you want us to go line by line,
22 because there are things which he could not possibly know

1 about.

2 MR. CODINHA: The things that he knows about.

3 MR. BENNETT: Things that he knows about, all

4 right.

5 THE WITNESS: But that doesn't answer the
6 question because my answer would imply that I know about
7 everything in this letter, so if you want a line by line,
8 I'll do a line by line.

9 MR. BENNETT: No, please don't do that. Which
10 letter are we talking about?

11 THE WITNESS: It says here in the March 11, 1994
12 for obvious reasons, I've been reviewing all of my files
13 and other information which possibly could refer to this
14 matter. I have no idea whether he was accurate. I have no
15 idea whether that's accurate or not.

16 BY MR. CODINHA:

17 Q In that same letter, the March 11 letter, he says
18 at neither meeting, which he's referring to the meetings
19 above, did he seek advice nor was it given.

20 Did you think that was accurate, that Mr. Altman
21 neither sought advice nor was given advice?

22 A You're looking at the March 11th letter?

1 Q I just picked March 11th at random, yes.

2 A Which meetings -- let me see what meetings he's
3 referring to. In my view, that was accurate. He didn't
4 seek advice. He informed us. We informed him.

5 Q Did you think he was given advice?

6 A No.

7 Q You don't believe that the White House opining
8 that they didn't believe he needed to recuse himself was
9 giving him advice?

10 A It wasn't giving him advice. It was a matter of
11 opinion, but the critical aspect of that meeting in my view
12 was that it was entirely up to him as to whether or not he
13 was going to recuse himself.

14 Q And in the two previous letters, the letter of
15 March 2nd and the letter of March 3rd, where he says in the
16 letter of March 2 "as I indicated, no nonpublic information
17 was provided at that meeting on any aspect of the Madison
18 Guaranty matter."

19 Did you believe that was accurate?

20 A I had no reason to believe it was not accurate.

21 Q Did you believe that the information that the RTC
22 would not be able to prepare the case to the satisfaction

1 of the general counsel at the RTC before the statute of
2 limitations would run on the Madison case was a matter of
3 public record?

4 A I had no reason to believe that it wasn't. I
5 don't think -- I don't think it was the subject of press
6 accounts, but I had no reason to believe it was a
7 confidential, nonpublic matter.

8 Q Was there any reason you believed that it was
9 public?

10 A No, but that doesn't answer the whole question.

11 MR. BENNETT: When you say "public," do you mean
12 outside of the RTC, if Senator D'Amato had the
13 information?

14 BY MR. CODINHA:

15 Q Mr. Altman is saying in his letter "as I
16 indicated, no nonpublic information was provided at that
17 meeting on any aspect of the Madison Guaranty matter."

18 Now that's what Mr. Altman is saying, it's not
19 what I'm saying.

20 MR. BENNETT: But isn't Mr. Altman in the best
21 position to make that statement. You're sort of asking my
22 client -- go ahead.

1 BY MR. CODINHA:

2 Q I want to know whether you believed that that
3 piece of information, that the RTC's general counsel would
4 not be able to prepare their case, according to Mr. Altman
5 before the statute of limitations had run, was a matter of
6 public record?

7 A Well, I don't know what you mean by "public
8 record." I was not on the impression that this was a
9 confidential, secret piece of information. He had already
10 shared it with us.

11 Q As far as you knew, was that the -- as far as you
12 knew who knew about that, the people at the White House
13 meeting?

14 A I didn't know who knew.

15 MR. BENNETT: I don't think that's fair because
16 it's in the record that point one of the talking points was
17 eight Republican senators wanted a tolling agreement. Why
18 would you want a tolling agreement unless there was some
19 knowledge outside of RTC on these matters?

20 MR. CHERTOFF: Let's not have the argument
21 between counsel. The hour is late.

22 BY MR. CODINHA:

1 Q Let me ask the questions. As far as you knew at
2 the time that the March 2, 1994 letter was written and you
3 reviewed it, and this reflected back on the February 2nd
4 meeting, had Mr. Altman announced publicly that he was not
5 going to be the one who made the decision as to the Madison
6 case?

7 A Could you repeat the question.

8 MR. CODINHA: Would you read the question back.
9 (The reporter read the record as requested.)

10 THE WITNESS: I don't think Mr. Altman -- I don't
11 recall Mr. Altman, until February 25th, I don't recall any
12 statement by Mr. Altman that I knew of that he wasn't going
13 to make a decision in the Madison case. What Mr. Altman
14 said, as I recall, in the February 2nd meeting was that he
15 was going to follow the normal course and that he intended
16 to follow the recommendation of the general counsel with
17 respect to that investigation and any recommendation
18 general counsel might make.

19 I didn't press him on it. I assumed if he
20 thought it was a totally unreasonable recommendation, he
21 might take a look at it but if it was in the normal course,
22 that he intended to follow that recommendation, point one.

190

1 Point two is -- can I see the letter again?

2 BY MR. CODINHA:

3 Q I think it's on page 336, 337 or 338.

4 A Bear with me a minute.

5 Q And this refers to the March 2nd letter.

6 A The March 2nd letter?

7 Q The March 2nd letter.

8 A As I recall, you specifically asked me whether
9 the information --

10 MR. BENNETT: I don't think we were talking about
11 the March 2nd letter.

12 MR. CHERTOFF: I believe it was March 11th.

13 BY MR. CODINHA:

14 Q No, actually I was asking about March 2nd because
15 the phrase I read was "as I indicated, no nonpublic
16 information was provided at that meeting on any aspect of
17 Madison Guaranty."

18 A Mr. Altman did not say, to the best of my
19 recollection, he never -- he did not say during the course
20 of that meeting, or afterwards, to me certainly and not to
21 anybody in that meeting, that the information that he was
22 providing was confidential or not public or that we could

1 not discuss it with anyone else, so I had no reason to
2 believe that it was not -- I'm trying not to use too many
3 double negatives -- I had no reason to believe that it was
4 not for public consumption.

5 Does that mean we were going to hand it to the
6 public? No, but he did not indicate to me or anyone else
7 in the meeting or me after that meeting that it was a of
8 confidential, nonpublic nature so therefore, I had no
9 reason to believe that this letter was other than accurate.

0 Q I'd like to turn your attention to Exhibit X --

1 MR. BENNETT: Excuse me.

2 (Witness conferred with counsel.)

3 BY MR. CODINHA:

4 Q I'd like to show you exhibit X197 and 198. It's
5 a fax sheet from the Secretary of the Treasury to
6 distribution dated 3/4/94, and it contains Mr. Altman's
7 letter of March 3, 1994. I'd like you to focus on the
8 cover page, the distribution list, and you are listed as
9 one of the people who are on the distribution list.

0 Have you had a chance to review it?

1 A This is the same letter we've been talking about.

2 Q But I want to ask you a question about -- I'm

1 just directing your attention to the front fax cover page.

2 Do you know how the -- strike that.

3 The people who are listed on that page are
4 Dee Dee Myers, Mark Gearan, David Gergen, George
5 Stephanopoulos, Harold Ickes and Mack McLarty?

6 A Yes.

7 Q And do you know how that particular distribution
8 list was developed?

9 A I don't.

0 Q Did you instruct Mr. Altman those are the people
1 who should be contacted?

2 A I don't recall that I did. I'm confident that I
3 did not. I have no recollection of talking to him about
4 that distribution list. In fact, I don't recall ever
5 seeing it until you've shown it to me today.

6 Q Do you recall creating a memo on or around March
7 1st, which was a confidential memo for the First Lady of
8 the United States that dealt with the Resolution Trust
9 Corporation?

0 A I may have. I don't recall the specifics.

1 Q Do you recall -- let me show you X1202. Does
2 that refresh your memory as to whether you created such a

1 memorandum?

2 A It looks as if I may have. I would point out --
3 it looks like a draft to me for the following reasons.
4 Typically, memorandum -- the final memorandum in the White
5 House to members of the White House staff and certainly to
6 the president and first lady typically -- not invariably --
7 but typically they are printed on White House stationery
8 that has "the White House" at the top. And typically, when
9 I send memos, I put my initials, HI, with a circle around
10 it after my last name and this does not have it which leads
11 me to believe that may be a draft. I'm not saying this
12 wasn't sent. It leads me to believe that this was a draft,
13 not a final.

14 Q Does that refresh your memory as to whether at
15 least a draft of such a document was created?

16 A As I sit here today, I don't recall specifically
17 creating a draft, but this certainly appears to be a draft.

18 Q Do you know the purpose, why such a memorandum
19 would be created?

20 A Assuming it was created and assuming it was, in
21 fact, sent to the first lady, I think the purpose was to
22 inform her about what was stated in the body of the memo.

194

1 Q This memo, as it has been supplied to us, and
2 you're looking at 1202 and 1203, indicates that there have
3 been heavy redactions on this memo, does it not, even on
4 the first page, it appears that there are redacted items?

5 A I don't know how you -- I'll take your word for
6 it. I don't know how you tell that.

7 Q There's a paragraph that appears in the middle of
8 the page and it looks like there's room above it and it
9 looks like there's room below it.

10 A Could be, but it could be a draft that was
11 mistyped.

12 Q And the top of the page has stamped on it -- I'm
13 sorry, not on your copy -- I'll show you X1200 and 1201 --

14 MR. BENNETT: I think in fairness to the witness,
15 though, even though you sort of had a look of disbelief,
16 the one you showed him doesn't have the reference redacted
17 on it whereas the one you've just showed him now does.

18 MR. CODINHA: I agree and that's why I supplied
19 another one to him.

20 BY MR. CODINHA:

21 Q I'd like to show you X1200 and 1201. And at the
22 top of X1200, does that appear to be a redacted version?

1 A It says so at the top.

2 MR. BENNETT: Let me, in fairness to you, though,
3 point out that page 2, which you hadn't looked at, of the
4 one you gave him does say "redacted" on the top.

5 MR. CODINHA: I'm now going to go to page 2 --

6 MR. BENNETT: I know, but I didn't --

7 BY MR. CODINHA:

8 Q I want you to look now at page 2 --

9 A Which exhibit?

0 Q You can look at any of them?

1 MR. BENNETT: Can we work with the one that says
2 redacted on both pages.

3 BY MR. CODINHA:

4 Q That's X1201 and does that indicate it says
5 "redacted (25 pages)"?

6 A It does.

7 Q Does that indicate to you this is a heavily
8 redacted document?

9 MR. BENNETT: It speaks for itself.

0 BY MR. CODINHA:

1 Q Do you recall writing 25 pages on the subject of
2 the Resolution Trust Corporation to the first lady?

1 A I do not and I doubt that I did.

2 Q When you say you doubt that you did, do you
3 believe that someone else acting on your instructions wrote
4 a 25-page memo?

5 A It's hard for me to tell since you say it's
6 heavily redacted. There's a blank page, other than the
7 word "redacted" and the handwritten page, "(25 pages)."

8 MR. BENNETT: Just so it will avoid confusion,
9 there could have been attachments or things of that kind.
10 I think to imply that he wrote a 25-page memo is not
11 accurate.

12 THE WITNESS: To further point out, I don't think
13 there's anything in here in the documents you've shown me
14 that indicates in one way or the other that I wrote a memo.

15 BY MR. CODINHA:

16 Q The only thing I would say -- does it say on
17 X1200 it is a "memorandum, confidential, to the First Lady
18 from Harold Ickes dated March 1, 1994 re: the Resolution
19 Trust Corporation." Have I read that correctly?

20 MR. BENNETT: His only point --

21 MR. CODINHA: No.

22 BY MR. CODINHA:

1 Q Have I read that correctly?

2 A Yes, you've read that, but your reading it
3 doesn't mean anything in the context of which we're
4 discussing it. This memorandum is a transmittal
5 memorandum. X001200 is a transmittal memorandum.

6 Q How can you tell that?

7 A It may not even be a transmittal memorandum.

8 Q First of all, how can you determine from looking
9 at the page that it's a transmittal memorandum?

10 A You're exactly right. I can't. And the only
11 reason I said that is because this was attached to it --

12 Q This being X1201 which is redacted 25 pages?

13 A Yes. And I assume, and probably incorrectly,
14 that this 1201 was attached to 1200. Therefore, I
15 concluded it was a transmittal memorandum and I'm in
16 error. I don't know whether it was or wasn't.

17 Q Thank you, sir.

18 MR. CODINHA: I think at this time I've concluded
19 my inquiry. You may inquire, sir. Let's go off the record
20 for a moment. Do we want to take five minutes because we
21 have to just shift.

22 (Discussion off the record.)

1 (Recess.)

2 EXAMINATION

3 BY MR. CHERTOFF:

4 Q We're going to proceed. Just to remind you, I'm
5 Michael Chertoff. I'm special counsel on the Republican
6 side of this inquiry. Sitting next to me is Joe
7 Braunreuther, who's my deputy special counsel.

8 Mr. Ickes, have you talked to anybody about the
9 contacts with the Treasury issue after March 4th other than
10 your attorney?

11 A I'm sure I have. I couldn't tell you who.

12 MR. BENNETT: Keep your voice up, Harold.

13 BY MR. CHERTOFF:

14 Q Other than with members of the press?

15 A Primarily with members of the press, but I'm sure
16 I've talked to others as well.

17 Q Have you talked to Ms. Williams about it?

18 A I don't recall talking to her at all about the
19 context.

20 Q Have you talked to Mr. Stephanopoulos?

21 A Probably.

22 Q What did you talk to him about?

1 A Just about the process that was actually going
2 forward, how the hearings were going to go forward, if
3 there were going to be hearings, if so, when.

4 Q Did you talk about your recollection of the
5 events that had occurred on February 2nd?

6 A You're talking about conversations with him after
7 March 4th?

8 Q Correct.

9 A I don't recall talking to him after March 4th
0 about that. I think I talked to him after the February 2nd
1 meeting.

2 Q When did you speak to him, after the February 2nd
3 meeting, about the February 2nd meeting?

4 A I don't recall.

5 Q What did you say to him?

6 A I don't recall what I said to him. I probably
7 related to him what had happened.

8 Q Was this before Mr. Altman had testified on
9 February 24th?

10 A I think it was. As I say, I don't recall a
11 specific time or date, but I'm fairly confident it occurred
12 prior to that testimony.

1 Q And what was the context in which you related
2 this thing?

3 A When you say "context," I'm not sure what you
4 mean.

5 Q Was it at a Whitewater response group meeting?

6 A I don't recall. As I said before, I don't recall
7 when or where the conversation took place.

8 Q Do you recall anything that he said to you?

9 A I don't.

10 Q Did you talk to Mr. Nussbaum about the February
11 2nd meeting after March 4th?

12 A After March 4th?

13 Q Correct.

14 MR. BENNETT: What's March 4th?

15 MR. CHERTOFF: March 4th was the day that
16 subpoenas were served or announced by Mr. Fiske.

17 THE WITNESS: I don't recall if I did or not. I
18 don't recall that I did. I may have, but I don't recall
19 that I did. I think any conversation I had with Nussbaum
20 probably occurred prior to the testimony of Mr. Altman
21 before Senate Banking. There wasn't a lot to discuss about
22 it.

1 BY MR. CHERTOFF:

2 Q What about Mr. Eggleston, did you talk a lot
3 about it with Mr. Eggleston about the February 2nd meeting
4 after March 4th?

5 MR. BENNETT: These are -- Counsel, isn't there a
6 privilege on some of this stuff?

7 BY MR. CHERTOFF:

8 Q Was Mr. Eggleston acting as your personal counsel
9 in respect to this inquiry?

10 A As my personal counsel?

11 Q Correct.

12 A He's White House counsel.

13 MR. CHERTOFF: I don't see the privilege. Are
14 you asserting the privilege?

15 MR. BENNETT: We understand the advice of White
16 House counsel or discussions of White House counsel with
17 any of the individuals you're not permitted to go into.
18 You can take that up with White House counsel. I'm not
19 going to debate what is or is not privileged but as a
20 practical matter, I'm going to let him answer at least that
21 last question. I don't want to make more of this than it
22 is.

1 BY MR. CHERTOFF:

2 Q Did you have conversations with Mr. Eggleston
3 after March 4th concerning the February 2nd meeting?

4 A I don't recall that I did. He had participated
5 in the February 2nd meeting. There wasn't a lot to discuss
6 about it.

7 Q Did you receive any requests from Mr. Fiske not
8 to discuss the subject matter of your testimony with other
9 people?

10 A Whatever he sent me, he sent me. I don't recall
11 the specifics of it.

12 Q Do you recall feeling under any obligation or
13 under any injunction -- I don't mean legally -- but under
14 any instruction not to talk about the subject matter of
15 your grand jury testimony with anybody else?

16 A Instruction from whom?

17 Q Mr. Fiske.

18 A Whatever he sent me, he sent me. I don't recall
19 the specifics of what he sent me. If you have a specific
20 document, I'll be glad to look at it.

21 Q Putting aside what he sent you, did you feel
22 yourself restricted in your conversations about the subject

1 matter of your grand jury testimony with anybody else other
2 than your counsel?

3 A If Mr. Fiske instructed me to that effect, then I
4 think I followed those instructions. I don't recall
5 specifically what he instructed. If you have a document,
6 I'll be glad to look at it.

7 Q As you sit here, you don't recall any restriction
8 on your ability to discuss the subject matter of your
9 testimony with anybody else other than your attorneys?

10 A It was my general practice not to discuss --

11 MR. BENNETT: I instructed him not to discuss his
12 grand jury testimony with anybody.

13 BY MR. CHERTOFF:

14 Q Other than your counsel's instruction, you're not
15 aware of any instruction or request from Mr. Fiske on that
16 as you sit here today?

17 A As I sit here today, but it was my general
18 practice not to have discussions about it.

19 (Witness conferred with counsel.)

20 Q Your testimony is in 1993, other than for a very
21 short period of time at the end of January or beginning of
22 February, you were not actually working at the White House;

1 correct?

2 A That's correct.

3 Q Were you in touch with White House personnel
4 advising then informally about matters?

5 A On occasion.

6 Q During the year 1993, did you have any
7 discussions with anybody at the White House concerning the
8 subject of Madison or Whitewater?

9 A Not that I recall. In my view, it was a very
10 complex matter that was very hard to understand and I
11 didn't have time to follow it closely and I don't recall
12 any specific discussions during 1993 about
13 Madison/Whitewater.

14 Q You testified on direct examination regarding
15 when you first learned or heard of the September 29th, 1993
16 meeting between the White House and Treasury.

17 Let me ask you, did you learn about that before
18 Mr. Altman testified on February 24th.

19 MR. BENNETT: I'm sorry, could you go a little
20 slower? You speak very fast, Michael.

21 MR. CHERTOFF: Not compared to Mr. Nussbaum, but
22 let me go slower.

1 MR. BENNETT: I know.

2 BY MR. CHERTOFF:

3 Q Let me direct your attention to when you first
4 learned about the September 29th, 1993 meeting. Did you
5 learn about that meeting first in 1994?

6 A Yes. I've testified when I learned about it and
7 I stand by that testimony.

8 Q Let me ask you because you were a little
9 ambiguous. Did you learn about it before Mr. Altman
10 testified on February 24th?

11 A About the September '93 meeting?

12 Q Yes.

13 A I think there was confusion as to whether it was
14 '92 or '93. It was my recollection it was the '93
15 meeting.

16 Q I'm talking about the September '93 meeting. Did
17 you learn about that meeting having occurred before
18 Mr. Altman testified on February 24th?

19 A I don't specifically recall. I think I learned
20 about it before the late February testimony by Altman, but
21 I don't have a specific recollection.

22 Q Did you learn about the October 14th, 1993

206

1 meeting before Mr. Altman testified on February 24th?

2 A Same answer. I recall learning about both of
3 those meetings, if not exactly the same time, approximately
4 the same time.

5 Q Were you surprised when you first learned from
6 someone in the White House that there might have been some
7 meetings between Treasury and White House personnel which
8 Mr. Altman had not reported in his February 24th testimony?

9 A I don't know if I was surprised or not. I don't
10 recall being necessarily surprised. I didn't watch -- as I
11 testified, I did not watch those hearings.

12 Q Does that help you to recall that you had heard
13 of the September and October meetings before someone in the
14 White House raised the question of whether it had been
15 accurately reported by Mr. Altman in his testimony?

16 A There was some question about that.

17 MR. BENNETT: In fairness to him, if someone has
18 told you that, I'd like you to refresh his recollection. I
19 mean, you don't have to --

20 MR. CHERTOFF: I'm just trying to ascertain
21 because Mr. Ickes was a little uncertain about when he
22 learned it.

1 BY MR. CHERTOFF:

2 Q You recall there were questions raised at the
3 White House very early March regarding whether Mr. Altman
4 had fully disclosed the number of meetings?

5 A Yes.

6 Q You recall hearing about that?

7 A I recall hearing about it and I recall it being
8 discussed. I couldn't give you time, place or date.

9 Q At the time you heard about it, were you -- were
10 you surprised to hear there had been other meetings, or
11 were you already aware there had been other meetings?

12 A I don't recall.

13 Q Did Beth Nolan participate in the Whitewater
14 response group before the February 2nd, 1994 meeting?

15 A It's my recollection that she did. As I've
16 testified earlier, I don't think that she was a regular
17 participant, but I recall her in some of those earlier
18 meetings.

19 Q In your capacity, after January 1, 1994, as the
20 person who was coordinating this Whitewater response
21 effort, did you have occasion to have conversations with
22 Mr. David Kendall?

1 A During what period of time?

2 Q After January 1, 1994.

3 A I had a number of conversations with Mr. Kendall.

4 Q And you understood Mr. Kendall to be representing
5 the president in his personal capacity; correct?

6 A That was my understanding.

7 Q And did you communicate to Mr. Kendall
8 information that you had learned in the course of meetings
9 with the Whitewater response group?

10 A Yes.

11 Q Did he make requests of you?

12 A Not that I recall, but there was an exchange of
13 information.

14 Q Did he ever attend a meeting of the response
15 group?

16 A No, I don't think that Mr. Kendall did. I don't
17 recall his ever attending it.

18 Q Did you ever attend a meeting with Mr. Kendall at
19 which anybody else -- did you ever have a face-to-face
20 meeting with Mr. Kendall?

21 A Did I?

22 Q Yes.

1 MR. BENNETT: Does this have to do with
2 contacts?

3 MR. CHERTOFF: Yes, after January 1, 1994.

4 MR. BENNETT: About contacts?

5 BY MR. CHERTOFF:

6 Q Let me ask you first, did you ever have a
7 face-to-face meeting? I'm not asking what the subject
8 matter was. I'm asking if you had a meeting face to face.

9 A Did I have a meeting with Mr. Kendall, yes.

10 Q Face to face after January 1?

11 A The answer is yes.

12 Q Was Mr. Nussbaum ever present during a meeting
13 you had with Mr. Kendall after January 1, 1994?

14 A Yes.

15 Q Was Mr. Lindsey ever present at a meeting you had
16 with Mr. Kendall after January 1, 1994?

17 A I don't recall specifically, but I'm pretty sure
18 probably, yes.

19 Q Was Ms. Williams ever present at a meeting that
20 you had with Mr. Kendall after January 1, 1994?

21 A Yes.

22 Q Did the --

1 A But I want to make clear for the record we're not
2 talking about the same meeting. You're using the phrase "a
3 meeting."

4 Q At any meeting.

5 A Okay. Fine.

6 Q Can you estimate during the month of January how
7 many times you would have met with Mr. Kendall in that
8 month?

9 A In the month of January?

10 Q Yes.

11 A I can't give you an accurate estimate. It was a
12 number of times.

13 Q Did you meet with Mr. Kendall in February of
14 1994?

15 A Yes.

16 Q Now, let me direct your attention to your
17 testimony concerning discussions on the issue of Whitewater
18 that you had with Mr. Altman. Did all these discussions
19 occur on the occasions of having meetings with respect to
20 the health care initiative?

21 A Let's go down -- the phrase all of these
22 discussions, I can't deal with that. You'll have to do it

1 discussion by discussion.

2 Q Let me begin with January 1, 1994. During the
3 month of January, do you recall having had a discussion
4 with Mr. Altman concerning the subject of Whitewater?

5 A Not other than what I've testified to before.

6 Q How many times do you recall having discussed the
7 subject of Whitewater with Mr. Altman in January 1994?

8 A I don't have anything to add to my prior
9 testimony.

10 Q Were these discussions that you had in the
11 context of health care meetings, either before meetings or
12 during breaks in the meetings?

13 A When you talk about -- I'm not sure I testified
14 that I had any discussions but to the extent I had
15 discussions, I think they were basically, I think I
16 testified they were hallway discussions.

17 Q Can you recall any opinion or view Mr. Altman
18 expressed to you in January 1994 regarding Whitewater?

19 A Any opinion?

20 Q Yes.

21 A I think that I've testified -- as I've testified
22 before, the meetings I had with him during that period of

212

1 time, to the best of my recollection, were very short and
2 basically hallway meetings and how do you think things are
3 going-type meetings.

4 Q How did he think things were going?

5 A As I've testified before, no one thought it was
6 going well.

7 Q I'm not asking you what everyone thought. I'm
8 asking you specifically what opinions did Mr. Altman
9 express regarding how things were going?

10 A To the extent he expressed an opinion --

11 MR. BENNETT: Are we talking about the press
12 reaction?

13 MR. CHERTOFF: I'm talking about conversations in
14 January in the hallway with Mr. Altman concerning his view
15 of how things were going, whatever that view may be.

16 BY MR. CHERTOFF:

17 Q What did he say to you?

18 MR. BENNETT: How things were going from what
19 perspective?

20 MR. CHERTOFF: Mr. Bennett, I'm only asking what
21 Mr. Altman said, whatever he said about Whitewater in any
22 way, shape or form.

1 (Witness conferred with counsel.)

2 MR. BENNETT: Just limit your remarks to contacts
3 and go ahead.

4 MR. CHERTOFF: When you're giving the witness
5 that instruction, you're suggesting to the witness that
6 some comments by Mr. Altman concerning Whitewater should
7 not be reported by the witness in January 1994.

8 MR. BENNETT: I'm not saying that at all. What
9 I'm saying is I think you should limit it to communications
10 between officials of the White House and the Department of
11 the Treasury relating to the Whitewater Development
12 Corporation, the Madison Guaranty Savings & Loan.

13 MR. CHERTOFF: Let me be clear for the record,
14 Mr. Bennett. The subject matter is the propriety of those
15 contacts. The critical issue is the state of mind of
16 Mr. Altman and the state of mind of Mr. Ickes, particularly
17 as it bears upon the discussion of February 2.

18 In order to plumb that state of mind, it's
19 important to know what Mr. Altman's state of opinion was
20 concerning the Whitewater matter because that might bear on
21 the issue of recusal, which is, as your client has
22 testified, he discussed in the contact with a Treasury

1 official. I do not believe, therefore, that it is possible
2 to respond to the question that I've posed other than that
3 to convey anything that Mr. Altman said in January of 1994
4 about Whitewater.

5 MR. BENNETT: Can you be specific with your
6 questions, then? Maybe my problem is the form of your
7 questions, because what I don't want is for you to have one
8 thing in mind and for my client to have another thing in
9 mind how things are going.

10 MR. CHERTOFF: I'll rephrase the question.

11 MR. BENNETT: And nobody has asked Mr. Ickes what
12 he thought of the propriety of this anyway, so if that's
13 what we're getting at, why in eight hours don't we ask the
14 question?

15 MR. CHERTOFF: I can only ask the questions that
16 come to mind.

17 MR. BENNETT: You ask the questions that come to
18 mind.

19 BY MR. CHERTOFF:

20 Q I'm directing your attention to January 1994, and
21 I'm directing your attention to hallway discussions you
22 have testified that you had with Mr. Altman. In those

1 discussions, tell us, what did Mr. Altman say concerning
2 the subject of Whitewater or Madison.

3 A To the extent that he said anything, it is my
4 recollection that my discussions with him were how do you
5 think things are going from public/press point of view and
6 to the extent that he responded to those questions, it's my
7 recollection he did not think things were going
8 particularly well.

9 Q Did he express a concern that the degree of
10 attention the White House had to pay to Whitewater was
11 distracting from the need to focus on other types of
12 issues?

13 A I don't recall him saying that specifically, but
14 obviously those of us who are involved in this were
15 concerned about the intensity and the amount of press
16 inquiries, the intensity of press inquiries and we were
17 concerned that this would have an effect on the White House
18 itself and on the president's agenda.

19 Q Did you express that view to Mr. Altman?

20 A Yes, I did.

21 Q Did you have any conversations with Maggie
22 Williams in January 1994 in which she expressed a concern

1 that the amount of attention being paid to Whitewater at
2 the White House was distracting from things the president
3 wanted to do in other areas?

4 MR. BENNETT: I'm going to object to that because
5 that has nothing to do with context and I'm going to
6 instruct him not to answer.

7 BY MR. CHERTOFF:

8 Q Did you express to Ms. Williams the view that the
9 degree of attention being paid to Whitewater and the White
10 House was distracting from other issues that should be
11 pursued by the White House?

12 MR. BENNETT: Same objection.

13 MR. CHERTOFF: Just for the record, again, we're
14 discussing conversations between people who are
15 participating in a contact within a period of less than or
16 approximately a month or less, which goes to the state of
17 mind of the participants.

18 MR. BENNETT: I have no objection to you asking
19 him if he had conversations with Ms. Williams about
20 contacts with the -- if the resolution had been drafted
21 broader, then I think -- but you can't broaden the
22 resolution.

1 MR. CHERTOFF: I'm not broadening the
2 resolution. I want to make clear the theory under which
3 I'm asking the question so if it's necessary to do this
4 again, you've had a fair understanding of what my position
5 is.

6 I'm asking the witness to testify about
7 conversations which directly reflect the state of mind of
8 participants who within a period of one month or less are
9 going to have a discussion with a Treasury official
10 concerning the matter of Whitewater. Since the issue is
11 not merely whether the contacts occurred but the intent of
12 the participants, whether the intent was improper or not,
13 knowing what was in their state of mind within the month
14 preceding the contact is directly relevant and pertinent to
15 the subject matter of the inquiry.

16 Now I'm going to ask --

17 MR. BENNETT: If I understand, and I'm not sure I
18 do, your predicate is you might as well rip up this
19 resolution because there is no question that you can't ask
20 him about any conversation he had with anybody at the White
21 House, but let me ask him.

22 (Witness conferred with counsel.)

1 MR. BENNETT: Go ahead.

2 MR. CHERTOFF: Do you need the question reread?

3 MR. BENNETT: On the state of mind, you thought
4 those people didn't even know what the subject matter was
5 so I don't understand your predicate. Never mind. Go
6 ahead. Just answer the question.

7 MR. CHERTOFF: Read the question.

8 THE WITNESS: She's going to read it back. He
9 talks fast and asks convoluted questions.

10 MR. BENNETT: No comments.

11 (The reporter read the record as requested.)

12 THE WITNESS: Did I express that?

13 BY MR. CHERTOFF:

14 Q Yes.

15 A I expressed -- I recall talking to Ms. Williams
16 on several occasions and expressing the view that the
17 number of press inquiries and the intensity of the press
18 scrutiny of Madison/Whitewater, one, diverted some
19 attention, but more importantly, I was concerned with, as
20 were others, that they would divert attention from the
21 president's basic agenda.

22 Q What was her response?

1 A I don't recall her specific response. In
2 general, I think that she was in agreement with that view.

3 Q Did you ever become aware of any conversation
4 Ms. Williams had with Mr. Altman concerning the subject of
5 Whitewater?

6 A What period of time?

7 Q In December of 1993 or January of 1994, meaning
8 that's when the discussion took place.

9 A Did I learn about a discussion that she had with
10 Altman?

11 Q Concerning --

12 MR. BENNETT: Other than our preparation of him?

13 BY MR. CHERTOFF:

14 Q Other than from counsel concerning the subject of
15 Whitewater or Madison.

16 A Not that I recall.

17 Q In January 1994, did you learn of a meeting
18 between Secretary Bentsen and George Stephanopoulos
19 regarding the subject of Whitewater?

20 A Did I learn of it in January or did I learn that
21 the meeting occurred in January?

22 Q Did you learn of a January meeting during the

220

1 month of January?

2 A Let me make sure I understand. During the month
3 of January, did I learn of a meeting during January?

4 Q Between Mr. Bentsen and Mr. Stephanopoulos.

5 A The answer is no, and I don't recall knowing
6 about such a meeting until you just described it today.

7 Q Since January 1, 1994, other than conversations
8 with counsel, until today, you've been unaware of any
9 meeting between Secretary Bentsen and Mr. Stephanopoulos
10 concerning the subject of Whitewater?

11 A I've been unaware.

12 Q During your hallway encounters with Mr. Altman in
13 January of 1994, did you ever ask him a question concerning
14 the statute of limitations as it applied to the RTC/Madison
15 investigation?

16 A The one that I've testified about that was the
17 subject of discussion on February 2nd?

18 Q Correct.

19 A I don't recall having any conversations with him
20 about it. Not to say that I didn't, but I don't recall any
21 conversations.

22 Q Prior to the time you became involved as deputy

1 chief of staff at the White House, how long had you known
2 Mr. Altman?

3 A I had known him casually going back to at least
4 the Mondale campaign which was 1984.

5 Q Was your acquaintanceship with him working
6 together on political campaigns?

7 A Yes, and it was very casual.

8 Q After you joined the administration in January,
9 did you form any social relationship or personal
10 relationship with Mr. Altman, apart from your professional
11 work with him as a member of the White House staff?

12 A It was primarily in connection with work. We got
13 to know each other better because we saw each other more in
14 various meetings I've described. I think I've only been to
15 his house once on a social occasion.

16 Q Still directing your attention to January of
17 1994, was one of the duties of the White House Whitewater
18 response group to deal with congressional inquiries that
19 were beginning concerning the subject of Whitewater?

20 A Its primary purpose, as I said before, was to
21 deal with the numerous and intense press inquiries but
22 congressional inquiries as well. I don't recall whether a

1 member of our congressional staff was in those early
2 meetings. I tend to think not, but certainly they had been
3 involved as Whitewater/Madison has developed over the
4 course of months.

5 Q And was there a focus on congressional activity
6 after the middle of January when Senator D'Amato began to
7 appear on the floor and do a countdown regarding the
8 statute of limitations?

9 A There was.

10 Q Did that spur you to have somebody do some
11 research on the issue of statute of limitations?

12 A I recall asking Neil Eggleston to do some
13 research, and I don't recall exactly when I asked him to do
14 it.

15 Q Was that before February 2nd?

16 A Don't remember.

17 Q Was it before you had heard of the statute of
18 limitations presentation by Mr. Altman?

19 A I tend to think not, but I don't recall
20 specifically. I think it was after that.

21 Q But you're not sure one way or the other?

22 A I'm not positive.

1 Q Did you ask him to look at anything in
2 particular?

3 A No. I think I asked him to look at the whole
4 issue of the statute of limitations. It was fairly
5 complex, as far as I was concerned, and I wanted him to
6 take a look at it to give me a briefing on it. I tended to
7 think it happened after the February meeting, but again, I
8 can't be positive about that.

9 Q Did he give you a briefing?

10 MR. BENNETT: I'm going to object. This is
11 beyond. I'm going to instruct him not to answer that. It
12 has nothing to do with contacts between the White House and
13 Treasury, what the White House legal counsel prepares.

14 BY MR. CHERTOFF:

15 Q Now, let me direct your attention to the day or
16 two before February 2nd. Did Mr. Altman call you directly
17 to set up the appointment for the meeting on February 2nd,
18 or was the call transferred from someplace else?

19 A It is my recollection that he called directly.
20 Again, there are two levels that my phone call goes
21 through. It's answered by a secretary in the outer office
22 and if somebody like Roger Altman calls it's transferred to

224

1 Janice Enright, who makes a decision whether to give it to
2 me. She and I work physically in the office together so
3 she can just ask me do I want to speak to Roger.

4 Q Who is Patricia McHugh?

5 A Patty McHugh is the secretary and still is, but
6 during this time period during February and January of '94,
7 she was the secretary to the chief of staff, McLarty.

8 Q Did you ever have occasion to give her
9 instructions or asked her to carry out assignments for you?

10 A The answer is -- I don't want to be totally
11 qualified about that. The answer is no. I might have
12 asked her to give a message to Mack or something like
13 that. She worked for Mack McLarty. She didn't work for
14 me. Except in an extreme emergency, I wouldn't ask her to
15 do things for me. I had a staff of my own who could do
16 those things.

17 Q Did you ask her to type up appointments for a
18 meeting in which Mr. McLarty would be included?

19 A It's possible, but again, Janice Enright does
20 virtually all of that stuff for me. She knows everybody in
21 the White House. Everybody knows who she is and she is on
22 a first-name basis with everybody and sets up meetings of

1 that kind.

2 Q Before the February 2, the only people you had
3 invited to the meeting were Mr. McLarty and Mr. Nussbaum?

4 MR. BENNETT: He said to the best of his
5 recollection.

6 THE WITNESS: To the best of my recollection.

7 BY MR. CHERTOFF:

8 Q Do you have a recollection that you invited
9 Ms. Williams?

10 A I stand on my prior testimony. I don't recall
11 inviting Ms. Williams. That's not to say that I didn't,
12 but I don't recall that I did.

13 Q Can you think of any reason that you would have
14 invited her?

15 A Not necessarily. I didn't know the subject of
16 the meeting but again, I may have. I may not have. She
17 may have been invited late to the meeting. My recollection
18 is she came late to the meeting.

19 Q Did Mr. Altman suggest that she be invited?

20 A Not to my knowledge -- or not to my recollection.

21 Q After the meeting concluded on February 2nd,
22 until the time that Mr. Altman called you or rather spoke

226

1 to you and told you he had decided not to recuse himself,
2 did you have any telephone calls with Mr. Altman?

3 A Not that I recall. I mean, I think that meeting
4 occurred --

5 MR. BENNETT: You say "after." You mean on that
6 day?

7 BY MR. CHERTOFF:

8 Q From the time the meeting concluded on February 2
9 up until the time that Mr. Altman appeared before you in
10 person to tell you he was not going to recuse himself, in
11 that intervening period, did you have any telephone contact
12 with Mr. Altman?

13 A About this subject?

14 Q First of all, about any subject.

15 A I don't recall. I mean, I talked to Roger fairly
16 frequently. A lot of it, he's very interested in the
17 health care matter. There's some other matters he talks to
18 me about. I don't recall a specific conversation. I could
19 have.

20 Q Again, focusing you on this intervening period,
21 did you have any conversation with him over the telephone
22 on the subject of Whitewater?

1 A I don't recall it. I recall the next time I
2 talked to Roger Altman about Whitewater was that meeting
3 that I think occurred within a day or so following a
4 meeting on the 2nd. Could I have? It's possible. As I
5 sit here today, I don't recall.

6 Q Are you aware of anybody who had such a
7 conversation, anybody in the White House who had such a
8 conversation with Mr. Altman from the time of the February
9 2nd meeting until the time that Mr. Altman told you of his
10 decision not to recuse himself?

11 A As I sit here today, I'm not aware of any.

12 MR. BENNETT: If you have anything to refresh his
13 recollection, in fairness, we would ask you to show him.

14 MR. CHERTOFF: I'm just asking him what he
15 recalls.

16 THE WITNESS: I don't recall.
17 (Witness conferred with counsel.)

18 BY MR. CHERTOFF:

19 Q What did you do with your notes after the meeting
20 on February 2?

21 A What did I do with them?

22 Q Yes.

1 A I put them in the file.

2 Q Did you have a file designated for Whitewater
3 matters?

4 A I did.

5 Q How was the file titled?

6 A I have various different files.

7 Q Can you describe what the setup was of the file,
8 what the different categories were?

9 A There were a number. They kept growing. This
10 matter kept growing, so it would depend. I have a file on
11 Resolution Trust Corporation. I have a file on different
12 aspects or different subject matters as it relates to --
13 one on D'Amato, for instance. I have different categories,
14 I think, that I'll either want to keep something on. I
15 will just develop a file and I'll keep them alphabetically.

16 Q I'm sorry. Why would you have a file on D'Amato
17 relating to Whitewater?

18 A Because he was talking a lot about it.

19 Q And what would you keep in that file?

20 A I'd have to look.

21 Q You have no recollection?

22 A Press clips and statements that he was making.

1 Q Did you have a file marked "RTC Clinton
2 personal"?

3 A I don't know if that's the exact marking. I do
4 have a file marked RTC.

5 Q Let me show you X91 and ask you if that's a Xerox
6 copy of your file on that.

7 A It's indistinct. I can't tell.

8 Q I'm sorry, you can't -- is it your testimony that
9 you can't read the words "RTC Clinton personal" or that you
10 can read them but you can't tell whether this is a copy of
11 your manila folder?

12 A It looks like "RTC Clinton personal." I recall
13 that my file said "Resolution Trust Corporation," but this
14 may be it.

15 Q What particular things did you put in that file?

16 A I would put things in that pertained to ongoing
17 things about Resolution Trust Corporation. I think my
18 notes of the meeting on February 2 went there. Press clips
19 went in there. There was a lot of news clips in these
20 files, predominantly news clips.

21 Q Did you just have one manila folder for "RTC
22 Clinton personal" or did you have a lot of files regarding

230

1 press clips on the Whitewater matter?

2 MR. BENNETT: At what point in time are you
3 talking about?

4 BY MR. CHERTOFF:

5 Q We're talking about in the first three months of
6 1994. Did you have more than one folder for your
7 Whitewater material?

8 A Yes.

9 Q And one of those was marked either "Resolution
10 Trust Corporation Clinton personal" or "RTC Clinton
11 personal"?

12 A Yes.

13 Q And how did you distinguish what went into that
14 file from what went into other files?

15 A I just made a judgment.

16 Q What was the basis of your judgment?

17 A I'd have to look at each individual item.

18 Q Did you put other notes in your RTC Clinton
19 personal file?

20 A I did.

21 Q And were they notes that related in particular to
22 the RTC?

1 A Presumably.

2 Q And what was the content of those notes?

3 A I have no idea. I'd have to look that up.

4 Q Did you review those notes before you made a
5 production to Mr. Fiske?

6 A I did.

7 Q Did you review those notes before production was
8 made here?

9 A Yes.

10 Q Was there any mention in any of those notes of
11 the words "statute of limitations"?

12 MR. BENNETT: Well, the documents speak for
13 themselves. Just so you clearly understand, Mr. Ickes did
14 not take responsibility for the production. We gathered
15 all of the materials. The materials were turned over to
16 Mr. Fiske and when the congressional subpoenas came, the
17 White House decided what would be turned over. To our
18 knowledge, you've gotten everything there is to get.

19 MR. CHERTOFF: I'm not asking how the decisions
20 were made to turn the documents over. I'm simply asking
21 whether Mr. Ickes remembers materials in the file.

22 BY MR. CHERTOFF:

1 Q Were there notes in the file in which the words
2 "statute of limitations" appeared?

3 MR. BENNETT: If he remembers.

4 THE WITNESS: The words "statute of
5 limitations"?

6 BY MR. CHERTOFF:

7 Q Right.

8 A I don't recall the words "statute of
9 limitations," other than press clips.

10 MR. BENNETT: Now you've got -- the February 2
11 note does not refer to statute of limitations. It refers
12 to SL.

13 THE WITNESS: It does not refer to statute of
14 limitations.

15 BY MR. CHERTOFF:

16 Q Excluding TS1192 which is your February 2nd
17 notes, excluding that, were there references to the statute
18 of limitations in any of your other notes?

19 A Not that I recall.

20 Q Were there references to recusal in any of your
21 notes?

22 A I don't recall. I'd have to look at the notes.

1 Q Were there references to Mr. Altman in any of
2 your other notes?

3 A I suspect there were. Again, I'd have to look at
4 them.

5 Q And where are all those notes now?

6 A Those notes, to the extent they exist, they are
7 in that file.

8 Q Are they in your custody or in the custody of
9 White House counsel?

10 A They're in my custody.

11 Q Were they returned to you by White House counsel
12 after White House made a review of the notes?

13 A I turned over to White House counsel what they
14 asked for and they were returned to me.

15 Q Let me make sure I understand. Did you turn over
16 to White House counsel all your notes on Whitewater when
17 they requested you to turn over material?

18 A I turned over the notes and information and
19 documents that White House counsel asked for.

20 Q What did they ask for?

21 A I don't recall at this time.

22 May I take a break?

1 MR. CHERTOFF: Sure.

2 (Recess.)

3 MR. BENNETT: I'm a little confused as to what
4 you're asking him. It is my understanding that the White
5 House did not ask him to turn over all of his notes or
6 papers or documents on Whitewater. I think in connection
7 with the inquiries he was asked to turn over anything and
8 everything pertaining to context. I'm not trying --

9 MR. CHERTOFF: What I'm trying to find out is who
10 made the decision? Who made the cut on the scope of the
11 resolution? Was it White House counsel or was it
12 Mr. Ickes? That's what I'm trying to find out.

13 MR. BENNETT: I'll tell you it was White House
14 counsel.

15 MR. CHERTOFF: I don't want to argue with you
16 about it. I want to get the facts out.

17 BY MR. CHERTOFF:

18 Q Did White House counsel request from you all of
19 the notes in your possession that mentioned Whitewater?

20 A I don't know -- I don't recall the scope of what
21 they asked me for.

22 Q Did they ask you to make a selection or to go

1 through your notes and select the documents that you
2 believed were responsive to their request?

3 MR. BENNETT: Wait, wait. What's not fair here
4 is you are asking if Mr. Ickes got requests for inquiries
5 and turned them basically over to counsel and these matters
6 were worked out through counsel. Mr. Ickes didn't go and
7 make the decisions as to what --

8 MR. CHERTOFF: That's what I'm asking.

9 BY MR. CHERTOFF:

10 Q Mr. Ickes, did you turn all your files over to
11 your private counsel and have counsel make a decision about
12 what was responsive?

13 MR. BENNETT: For which requests?

14 MR. CHERTOFF: Let me go back to the beginning.

15 BY MR. CHERTOFF:

16 Q Did you get a subpoena from Mr. Fiske or a
17 request from Fiske?

18 A I got either a subpoena or a request. I don't
19 recall which.

20 Q Did you turn all of your files relating to
21 Whitewater over to your counsel in order to respond to
22 that?

1 MR. BENNETT: He did not do that. We did that.
2 The lawyers did that.

3 BY MR. CHERTOFF:

4 Q Did your counsel -- did you give counsel access
5 to your office so they could come in and go through all of
6 your files in order to make a determination about what was
7 responsive --

8 MR. BENNETT: I'm going to instruct you not to
9 answer that. This is getting --

10 MR. CHERTOFF: Mr. Bennett, is there some reason
11 you can't explain the process as to who made the decision
12 about what was responsive?

13 MR. BENNETT: First of all, I am not a witness
14 here. My client is a witness here, and I've stated to you
15 for the record that my client, Mr. Ickes, did not make the
16 decision or handle the production of documents from either
17 Mr. Fiske or from Congress. Now, that's our position, and
18 you can ask 5000 questions. My client is not in a position
19 to respond to that.

20 BY MR. CHERTOFF:

21 Q Mr. Ickes, do you know who reviewed all of your
22 materials to determine what was responsive to the request

1 from --

2 MR. BENNETT: Don't answer the question. I
3 object to it. It's outside the issue of contacts.

4 MR. CHERTOFF: Is it your position, Mr. Bennett,
5 that we're not free to ask the witness concerning his
6 responsiveness to this committee's own request for
7 documents?

8 MR. BENNETT: I have explained and put on the
9 record exactly how this was handled, and I think you are
10 harassing the witness now because we've made it very clear
11 that Mr. Ickes did not handle the production and all you're
12 doing is harassing him, Michael.

13 BY MR. CHERTOFF:

14 Q Before Mr. Altman's testimony on February 24th,
15 did you instruct or ask Mr. Eggleston to find out what
16 Mr. Altman was going to be testifying to concerning the
17 February 2nd meeting?

18 A Will you repeat the question.

19 Q Directing your attention to the days before
20 February 24th, did you direct or ask Mr. Eggleston to find
21 out what Mr. Altman intended or expected to say at the
22 hearing about the February 2nd meeting?

1 A I don't recall instructing him or asking him
2 anything.

3 MR. BENNETT: Keep your voice up.

4 THE WITNESS: I don't recall instructing him or
5 asking him anything along that line.

6 BY MR. CHERTOFF:

7 Q Were you aware that Mr. Eggleston contacted the
8 Treasury Department concerning the content of Mr. Altman's
9 anticipated answer on the February 2nd meeting for the
10 February 24th testimony?

11 A Anticipate an answer on what issue?

12 Q On the issue of the February 2nd meeting.

13 A What issue relating to the February 2nd meeting?

14 Q Let me rephrase the question. Were you aware
15 that Mr. Altman contacted the Treasury Department to find
16 out what Mr. Altman was expected to say at the hearing
17 concerning the February 2nd meeting?

18 MR. BENNETT: You don't mean Mr. Altman.

19 MR. CHERTOFF: Yes, I do mean Mr. Altman.

20 MR. BENNETT: You said Mr. Altman contacted
21 you -- start over.

22 BY MR. CHERTOFF:

1 Q Were you aware that Mr. Eggleston attempted to
2 find out what Mr. Altman was going to say or expected to
3 say about the February 2nd meeting at the upcoming hearing?

4 A About the February 2nd meeting in general?

5 Q Anything about it. Were you aware Mr. Eggleston
6 made an inquiry?

7 A No.

8 Q Now, when you spoke to Mr. Altman the day before
9 the testimony, and he asked you to consider -- let me
10 withdraw the question.

11 You testified earlier you had a conversation with
12 Mr. Altman the evening before his testimony regarding his
13 position at that point in time on recusal. You testified
14 also that you indicated that you had an initial reaction
15 but you would think about it.

16 Did you get back to Mr. Altman and have a second
17 conversation with him that evening on the subject of
18 recusal?

19 A No.

20 Q Was there a point in time during the afternoon or
21 evening of February 24th -- 23rd, that you were making an
22 effort to get in touch with Mr. Altman?

1 A No.

2 Q Did you have a conversation with Mr. Steiner on
3 February 23rd concerning Mr. Altman?

4 A I did.

5 Q How did that conversation come about?

6 A I called Mr. Steiner.

7 Q Why did you call Mr. Steiner?

8 A Because I didn't want to wait around until
9 Mr. Altman told me he was getting back which I think was an
10 hour, hour and a half, two hours after my initial
11 conversation with him, so within five to 10 minutes after
12 talking with Mr. Altman, I called Mr. Steiner.

13 Q What did you tell Mr. Steiner?

14 A The gist of what I told him was that I related to
15 him, Mr. Altman's and my prior conversation, and I told him
16 that Altman had asked me to get back to him. I told him I
17 did not want to wait that long. I had other things to do.
18 I understood that he was in touch with Altman. He
19 confirmed that he was, and I told him that I had no further
20 thoughts on whether or not Mr. Altman should recuse
21 himself, other than what I talked to Altman about and it
22 was entirely up to him, Altman, whether to recuse himself

1 or not.

2 Q Did you have any further contact with Mr. Altman
3 before he testified on February 24th?

4 A I'm confident I did not.

5 Q As of February 24th, did you know what Mr. Altman
6 was going to say at the hearing concerning the issue of
7 recusal?

8 A I did not. I'm sorry. Say that again.

9 Q As of February 24th, did you know what Mr. Altman
10 was intending to say on February 24th concerning recusal?

11 A No, I did not.

12 Q Would it have surprised you if he had announced
13 his recusal at the hearing?

14 A It wouldn't have surprised me. He obviously was
15 thinking about it, based on my conversation with him of the
16 preceding evening. It was obvious to me he was giving that
17 consideration, so it would not have surprised me.

18 Q Did you tell anybody else, either on the 23rd or
19 the 24th, that it was possible Mr. Altman would make an
20 announcement to recuse himself at the hearing?

21 A I may have. I don't recall any specific
22 discussion.

1 Q In your conversation with Mr. Stephanopoulos and
2 Mr. Altman on the 25th -- let me withdraw the question.

3 Was it Mr. Stephanopoulos who first told you
4 Mr. Altman had recused himself or had announced his recusal
5 to The New York Times?

6 A Yes, I'm pretty sure I heard that from George.

7 Q At the time you had that conversation, did you
8 tell Mr. Stephanopoulos that a couple days earlier, he had
9 raised the possibility he might recuse himself?

10 A I had already told -- it's my best recollection
11 that right after I had my phone conversation with Altman
12 and I think a phone call from Steiner, all of which had
13 occurred in George's office, that I had related my
14 conversation with Altman.

15 Q Do you know whether Mr. Stephanopoulos told the
16 president that Mr. Altman was considering recusing himself?

17 A I don't know whether he did or he did not.

18 Q Is it fair to say, therefore, on the 25th you nor
19 Mr. Stephanopoulos expressed surprise about the fact that
20 Mr. Altman had, in fact, recused himself?

21 A I think quite to the contrary. We had expressed
22 surprise that he had recused himself.

1 Q I'm sorry. Maybe I was unclear in my question.
2 Your testimony is that on the 25th you and
3 Mr. Stephanopoulos expressed surprised that Mr. Altman had
4 recused himself?

5 A Yes, I've testified to that before.

6 Q And that's notwithstanding your conversation with
7 Mr. Stephanopoulos on the 23rd where Mr. Altman indicated
8 he was reconsidering the matter?

9 A Yes, because he had not -- it was my information
10 that he had not recused himself before the Senate Banking
11 Committee and therefore, it came as a complete surprise to
12 both Mr. Stephanopoulos and me that he had decided to
13 recuse himself in his conversation with an employee of The
14 New York Times.

15 Q Before February 25th, had you heard of anybody at
16 the White House making inquiries about how Mr. Stephens
17 came to be hired by the RTC to work on the Madison matter?

18 A Before --

19 Q The 25th?

20 A As I've testified before, I do not recall exactly
21 when I learned that his firm had been retained by the RTC.
22 I tend to think it was after the 25th, but as I sit here

1 today, I don't recall. It could have been shortly before
2 the 25th.

3 Q Did you ever learn that someone in the White
4 House made inquiries to find out how Jay Stephens came to
5 be hired by the RTC to work on Madison?

6 A I don't know if I learned that specifically.
7 Somebody told me -- I think it was somebody in the
8 counsel's office, whether it was Nussbaum or whether it was
9 one of the associate counsels, I can't be sure, and I'm not
10 even sure it was them but I think it was -- told me I was
11 interested in finding out how his firm came to be hired and
12 told me they had been retained under some sort of a
13 modified RFP process. That's what I understood. I didn't
14 follow it or pursue it any further than that.

15 Q Are you aware of whether the president expressed
16 a view concerning Mr. Stephens being hired by the RTC to
17 work on this matter?

18 A He did express a view.

19 Q When did that happen?

20 A Again, it was in that time period. I can't pin
21 it down any more closely than that. As I testified a
22 moment ago, I tend to think it was after the 25th, but I

1 can't guarantee that.

2 Q Was it in your presence he expressed the view?

3 A It was.

4 Q Who else was there?

5 A I don't think anybody else was there. I think he
6 and I were alone. I meet with him during the course of the
7 week on a number of occasions discussing different matters
8 and as I recall, this came up in the midst of a
9 conversation about something else.

10 Q What did you say to him and what did he say to
11 you?

12 A I don't recall the exact words. The gist of it
13 was he expressed grave concern about the fact that
14 Mr. Stephens's firm and we understood they had been
15 retained and we understood Mr. Stephens in particular was
16 going to be working with the RTC on that and I've expressed
17 and I've testified earlier today as to the basis for that
18 concern.

19 Q Now, recognizing you don't recall when the
20 conversation with the president occurred, did you ever
21 mention this conversation with the president to
22 Mr. Stephanopoulos?

1 A I probably did. George and I talk a lot during
2 the course of the day.

3 Q Was it your regular practice to fill each other
4 in on things that had arisen in discussions either of you
5 had with the president?

6 A No. I mean, George meets with the president on
7 many times during the day, many more times than I do. He
8 does not fill me in on everything that he discusses with
9 the president.

10 Q You testified earlier that you had informed the
11 president, and you also testified that you had informed the
12 first lady, concerning the substance of your February 2nd
13 meeting with Mr. Altman and the others.

14 MR. BENNETT: I think he said the gist.

15 THE WITNESS: I testified it was my best
16 recollection that I had.

17 BY MR. CHERTOFF:

18 Q Was that on a single occasion or were they two
19 separate occasions?

20 A I think I testified earlier they were on two
21 separate occasions, that is the conversation with the
22 president and a separate conversation with the first lady.

1 Q Was it your practice to brief the first lady on a
2 regular basis concerning matters that arose regarding
3 Whitewater and the Resolution Trust Corporation?

4 MR. BENNETT: I'm going to object to that and
5 instruct him not to answer that unless you limit it to
6 contacts. I don't think it's any business of this
7 committee what his regular practice is or is not with the
8 president or the first lady.

9 BY MR. CHERTOFF:

10 Q Did you tell Mr. Nussbaum you were going to
11 inform the president and the first lady about the gist of
12 what had occurred at the February 2nd meeting?

13 A I don't recall. I doubt it.

14 Q Do you know whether he was aware of it?

15 A He may have been. I may have told him
16 afterwards. Again, I doubt it.

17 Q Was anybody else present when you informed the
18 president about this?

19 A I don't recall that anybody else was present.

20 Q Was anybody else present when you informed the
21 first lady about this?

22 A I don't recall. As I sit here, I don't recall if

1 anybody else was present. I tend to think not but I don't
2 recall as a fact.

3 Q You understood as of February 25th that
4 Mr. Altman had recused himself --

5 A Had?

6 Q You understood on February 25th that Mr. Altman
7 had recused himself from sitting on the Madison matter at
8 the RTC; correct?

9 A That was -- yes, that was confirmed by
10 Mr. Altman, to both George Stephanopoulos and to me in a
11 telephone conversation.

12 Q Did you have any conversation with the first lady
13 concerning that decision after February 25th?

14 A I probably did. I don't recall either when or
15 where, but I probably did.

16 Q What was the reason you transmitted or you sought
17 to confirm an opinion from an ethics officer of the
18 Treasury Department that Mr. Altman did not have to recuse
19 himself from matters involving Madison Guaranty as of
20 March 1, 1994?

21 MR. BENNETT: I'm not sure that's what it said,
22 is it? I think you're mischaracterizing.

1 BY MR. CHERTOFF:

2 Q Let me read to you the following paragraph -- let
3 me ask you this first. X1200, which you've testified about
4 earlier, is it your testimony that you do not know whether
5 you sent this document?

6 A That's my testimony.

7 Q Do you deny that you prepared this document,
8 meaning just 1200, not what was attached?

9 A Based on what I see there, I think that I did
10 prepare it, but my answer in my prior testimony today is it
11 appears, based on my general practice, that is a draft for
12 the reasons I've already stated, and it's not clear to me
13 that was reduced to final form and actually sent. It may
14 well have been. It may well have been sent in that form.

15 Q In any event, you did prepare the draft?

16 A The answer is yes. It certainly looks as if I
17 did.

18 Q Do you recall seeking -- let me withdraw the
19 question.

20 As of March 1, 1994, you knew that Mr. Altman had
21 already made a decision to recuse himself; correct?

22 A As of when?

1 Q March 1, 1994.

2 A As of March 1, that followed February 25th.

3 Q So you knew he had recused himself; correct?

4 A Yes.

5 Q What was the reason you continued to try to find
6 out whether there was an ethics opinion that had been
7 issued that did not require him to recuse himself?

8 A Well, I'm not sure that's what that document
9 says.

10 Q How did you come to write that paragraph?

11 A Let me try to deal with the first question. Are
12 you withdrawing your first question?

13 Q Answer the first question and then we'll get to
14 the second one.

15 A I'm sorry, would you ask your first question.

16 MR. CHERTOFF: Can I have the first question read
17 back.

18 (The reporter read the record as requested.)

19 THE WITNESS: I had heard that there was such an
20 ethics opinion and I was interested as to whether there was
21 and what it said.

22 BY MR. CHERTOFF:

1 Q After your conversation with the first lady in
2 which you disclosed the gist of your February 2nd meeting,
3 did she direct you to ascertain whether there was any legal
4 opinion regarding the issue of Mr. Altman's need to recuse
5 himself?

6 MR. BENNETT: I'm not going to have him answer
7 those kinds of questions.

8 MR. CHERTOFF: Can I ask the basis for that?

9 MR. BENNETT: What does that have to do with
10 contacts?

11 MR. CHERTOFF: I think it tends to bear on the
12 flow of information that was transmitted from Treasury to
13 the White House.

14 (Witness conferred with counsel.)

15 MR. BENNETT: Go ahead and answer.

16 THE WITNESS: Would you repeat it, please.

17 (The reporter read the record as requested.)

18 THE WITNESS: I don't think so. I don't recall
19 any.

20 BY MR. CHERTOFF:

21 Q After that conversation, did she ask you if you'd
22 do anything with respect to Mr. Altman's decision whether

1 or not to recuse himself?

2 A You're talking about following February 2nd --
3 bear with me -- and before February 25th?

4 Q I'm asking you whether following February 2nd,
5 after you had informed the first lady of the gist of what
6 occurred on February 2nd, whether at that time or any time
7 thereafter, the first lady asked you to do anything with
8 respect to the matter of Mr. Altman's deciding about
9 recusing himself?

10 A Well, following the 25th -- following the meeting
11 on the 2nd, he decided not to recuse himself. I don't
12 recall her giving me any instructions on that, about
13 finding out further information on his decision to recuse
14 or not to recuse.

15 Q Did she comment on it?

16 A I don't recall that she made any comment one way
17 or the other.

18 Q Did she comment at all on the portion of your
19 description concerning the progress of the investigation or
20 when the investigation might be completed?

21 A I don't recall. She may well have. I don't
22 recall anything specific. As I sit here today, I don't

1 recall any specific discussion she had or comments she had
2 on that.

3 Q When you informed the president about the gist of
4 the February 2nd meeting, did he comment on either the
5 question of recusal or the issue of when the investigation
6 would be completed?

7 A My recollection is I informed him of what
8 happened, the gist of what happened during the February 2nd
9 meeting and to follow up a very brief meeting I had with
10 Roger Altman. There was no reason to comment. I don't
11 recall any specific comment by him.

12 Q I'm sorry, did I understand you to say you also
13 informed the president about the follow-up meeting you had
14 with Roger Altman on February 3rd or February 4th?

15 A Yes. I don't recall a specific conversation but
16 undoubtedly, I'm confident that I described or informed him
17 of the fact that Mr. Altman had decided not to recuse
18 himself.

19 Q Did you inform the first lady of that fact?

20 A I don't recall specifically. I'm confident I
21 probably did.

22 MR. BENNETT: I think in fairness, you're

1 implying there was more than one meeting, and he had
2 earlier testified he wasn't sure when he told the president
3 about the second meeting so if it was after the 3rd, he may
4 have referred to both of them.

5 Isn't that what you've testified?

6 THE WITNESS: Yes.

7 MR. CHERTOFF: Thank you for clarifying that,
8 Mr. Bennett.

9 MR. BENNETT: You implied there were two
10 meetings.

11 MR. CHERTOFF: Mr. Bennett, I've implied nothing.

12 MR. BENNETT: I apologize.

13 MR. CHERTOFF: I'm simply asking questions, and
14 I've concluded my questions. Do you have something?

15 MR. CODINHA: I have no further questions, but we
16 would tell you, Mr. Ickes, as we tell all witnesses who
17 testify before this committee, that we suggest that you do
18 not discuss your testimony with anyone else, except your
19 counsel. We are not instructing you not to, but we are
20 suggesting it strongly. The reason for that is every
21 witness will come and testify before us will be asked the
22 question who they've spoken to and it may prove to be

1 embarrassing to you or to other people who have such
2 conversations.

3 I would also suggest that questions may very well
4 be asked to you or to other witnesses at the hearings so we
5 offer that you should, of course, follow your attorney's
6 advice, and he will tell you what you should or shouldn't
7 do.

8 Other than that, thank you very much. Thank you
9 for coming today.

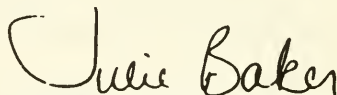
10 (Whereupon, at 7:17 p.m., the deposition was
11 concluded.)

12 -----
13
14 HAROLD M. ICKES
15
16
17
18
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

256

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1997

1/16/94 - Whitehurst -

- | | |
|--------------------------|----------------|
| • Jackson [at his house] | • F. Uls |
| • Kendall | • P. Williams |
| • Thomas | • George S |
| • K. O'Brien | • P. G. Giffen |

① release of detainees:

- as the value of coastal tunnel
- totally completely unexpected

② status of the detainees

- no allegations that detainees have been any less a threat
- we don't know what and refers to
- always expected for ground

③ the second round of ~~work~~

- shut down with no army
- op 2 -

OK - no possible problem locally

④ losses -



S 020790

- ~~concern that~~ W.H. stop ~~trust~~
- refer enquiry to both special counsel
- ~~direct~~ refer to D.K.

D.K. (cont.)

- \$200,000 - to buy white land
- purchased 1941 when SC was SC
- ~~SC was not~~ ~~included~~ ~~refused~~
- 230 acres
- 3 bad loans made to purchase this 230 acres
- only 3 bad loans made

(2) 183,000 mortgage loan - ~~also~~ ~~and~~

(3) 20,000 per year loan from ~~W.H.~~
one of ~~bad~~ ~~loans~~ ~~made~~ ~~now~~
by SC & NCO

- ~~included~~ into 44 lots
- ~~additional~~ 100,000 \$ needed to purchase
- ~~improved~~ (water, sewer, roads)
- ~~and~~ 1944 - white land purchased with
- ~~good~~ & ~~reliable~~ ~~valuable~~ ~~loans~~

(4) Flow down - NCO wrote to ~~bank~~
house to show -
NCO loans loans listed \$3

for 30,000

14 AC loans 30,000 \$ from
NCO bank (the ~~reliability~~
purchased)
- 30 AC to sell house to
14 AC loan -

referred Sat. 100
when this found &
another bank

when the
30,000 loan was paid
down to 20,000 \$
was a ~~found~~ ~~loan~~
with ~~on~~ ~~it~~ ~~20,000~~

S 020790A

- 20,000, ^{totally} repaid in 1988
- N.C. then purchases Northern County S/C
but also gave a loan to
White from Northern C.
- Aug. 85 - 24 hrs repaid
- N.C. repaid all 24 hrs
to Chris Wade in return
to BCLHRC
- sold for an airplane
- Wade subsequently gives
in to bankruptcy
- Early 1986, White pays off 20,000
personal so loan -
- 1988 - started pay off

- Nov 93 - first loan loaned that
N.C. had paid 800 and in
return letter from in return
a White from - sent 1 page -
- started loan from being about
but that
- Wade picks up personal of
loan to bank, but N.C.
started still in
- 1989 - N.C. indicated
1990 - N.C. had a copy acquired
property using bank that White
had repaid purchase trip to
- HRC seeks proof of debt to
clean up affairs of the
White
- 1990 - HRC demands franchise,
real estate - in one trip
not paid



S 020791

- Since we know the thing returned
are better

How long from?

- 1985 returned (15 months returned)

- • trying to get back results
come to agree more of
preference stated

• to point out how to
act as results

- but Barrett approved but only
if it agreed to capital
amount

- July 1986 - P.O. sent
9/11/86



→

*

1984 - we have 50,000 loan from
Bul of clay valley for pro
cure -



P.O. held for me 26, over -

• 3 copies copies 3, over and

• we don't have more of

continuity

1992 -

maintained accounts from [1985]

conduct meetings

S 020792

Dec 92

Chatter 50% interest in letters related to

Jan P.O. received for \$1,000

Since 1992 - for 180,000 loan
had been repaid

— beats

- by 1951 - ~~beats~~ all white living
quad off
- house not tato -

• mainly to go around ~~and~~ r
quad 3 AS and day
to 1992 cy on

- 3 yrs to and return - maybe
they will clear it

Public
output

⑦
⑧

- they "did" take some interest
described day from 1950

③ • Large center of B.C./H.A.C.

• U.S. - do nothing now

• "I want that this might people get"
viable & come in this

• Public would react ~~to~~ at 4
H.C. & already beats and
a former

④ H.C. - as house on thing

• 90 can't be directed from south end

attorney press/public will think
what is a long run of it

the next market of health

* → K.O.D. for beats who think about this

⑤ Entry hinged

- But G → B. W. for

⑥ House entry hinged

*

5 020793

*

③ Independent animal studies

- don't select SC as appropriate
- The chosen studies we want it permitted to have SC considered as IC or not

⑧ Re-examine these groups on irregular basis

⑨ open - - maybe not do this; maybe not no ~~strong~~ strong feelings on this

PG → ⑩

*

⑪ calls per pair -

→ all calls to GS

- see how many in



S 020794

Docudrama

By Sidney N. Herman

CHICAGO

Documents that are relevant to an investigation are found in an unexpected place six months after they were first sought. A shocking development?

Absolutely not. In most major pieces of litigation, files turn up late. One side or the other always thinks of making something of the late appearance, but these lawyers know the truth: It could just as easily happen to them.

Despite diligent searches, important papers in large organizations are always turning up after the initial and follow-up searches. How many times have you looked for something on your desk and couldn't find it, only to have it appear right under your nose later? Happens all the time.

Indeed, as every litigator knows, there is nothing worse than having an important document show up late. You've only highlighted its absence for your opponent. If you know where it is, it is far better to include it in the

initial delivery of relevant papers, where it gets mixed in with the rest of the morass. Why red-flag it by holding it back?

My former partner, Kenneth Starr, knows all this. As independent counsel in the Whitewater investigation, he will take it into account.

But the American people have no reason to know that this is a normal

Please. Every
lawyer loses files.

occurrence; it is not part of their everyday experience. Reporters really don't have any reason to know this either. Or they may know, and simply choose to ignore it.

Last summer, notes that were critical to the celebrated libel suit brought by Jeffrey Masson against the writer Janet Malcolm appeared in her private study, years after they were first sought. I recall that discovery being treated as an interesting happenstance, nothing more.

When documents show up belatedly, even in private quarters, there is simply nothing unusual about it. □

Sidney N. Herman is a lawyer.

THE WHITE HOUSE
WASHINGTON

WH

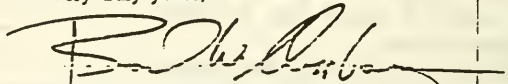
January 12, 1994

Dear Madam Attorney General:

The President has directed me to request you to appoint as special counsel a respected, impartial, and qualified attorney, who is not a member of the Department of Justice or an employee of the federal government, to conduct an appropriate independent investigation of the Whitewater matter and report to the American people.

In view of the gravity of the President's responsibilities and the need for a prompt resolution, I respectfully request that this investigation be conducted as expeditiously as possible.

Very truly yours,

Bernard W. Nussbaum
Counsel to the President

The Honorable Janet Reno
Attorney General
United States Department of Justice
Washington, D.C. 20530



The President today has directed White House Counsel Bernard Nussbaum to request the Attorney General to appoint as special counsel a respected, impartial and qualified attorney, who is not a member of the Department of Justice or an employee of the federal government, to conduct an appropriate independent investigation of the Whitewater matter and report to the American people. In view of the gravity of the President's responsibilities and the need for a speedy and credible resolution here, the President requests that this investigation be conducted as expeditiously as possible.

There have been no credible allegations of wrongdoing by the Clintons in this matter, and the President has full confidence in the ability of the Justice Department to independently and properly investigate this matter. Nevertheless, the President has decided to ask the Attorney General to resolve the issues surrounding the controversy through a special counsel, in order to ensure the public a full and fair accounting of this matter. This controversy is becoming too much of a distraction. The President wants to get on with the vital issues facing the American people.

These facts bear repeating: The Clintons made a losing investment in a real estate venture managed by the McDougals, Whitewater Development Corporation, one for which they received no dividends and no income. All the bank loans taken by the Clintons were repaid in full (none were from any S&L). While the Clintons earned nothing from their investment, were not involved in the company's operations, did not keep its records; and did not have access to its records until the later stages of the company's existence, at which point they expended considerable effort assuring that Whitewater's tax returns were filed, that its franchise and real estate taxes were paid, and that its few assets were sold off in a responsible manner. The great bulk of the documents the Clintons have voluntarily turned over to the Justice Department were only compiled after a painstaking effort to gather Whitewater's records.

Several years after the Whitewater investment, the principal and managing partner, James McDougal, purchased a savings and loan. The state supervision of Madison Guaranty was rigorous and proper. There is not a single factual allegation that then-Governor Clinton took any steps whatever to ease regulatory pressure on Madison. As the Wall Street Journal concluded editorially, "there is no evidence that Governor Clinton urged [regulators] to go easy." Indeed, it was Governor Clinton's Securities Commissioner who, along with federal regulators, forced James McDougal to resign as head of the thrift. And it was Governor Clinton's Securities Commissioner who asked the federal government to put Madison Guaranty into receivership.

A federal grand jury is currently investigating matters relating to Madison that may touch upon Whitewater. The President and Mrs. Clinton have cooperated fully with the investigation, and they have directed their attorney to continue to do so.

This investigation has been conducted appropriately and independently investigated by the Justice Department. Indeed, the Attorney General has taken all proper steps to assure the independence of this probe. Since the recusal of United States Attorney for the Eastern District of Arkansas, the investigation has been headed by a career prosecutor, who served as



a United States Attorney under two Republican Presidents. There is no reason to doubt that the capable and experienced staff of the Department of Justice has been anything other than thorough, energetic, professional and even-handed.

Despite their total and voluntary cooperation with the current investigation, the Clintons have been subjected to a barrage of innuendo, political posturing and irresponsible accusations. The President is determined that this controversy must not distract him, his staff or his Administration from the important business of renewing America.

It is remarkable that those who call for an independent counsel state that there is no evidence of wrongdoing by the Clintons in this matter. Senator Dole has said, "My view is that the President probably will be cleared and this will not be an issue, but let's go ahead and get it done." And the Washington Post has editorialized, "there has been no credible charge in this case that either the President or Mrs. Clinton did anything wrong." It would be troubling to require the appointment of a special counsel every time there is an unsubstantiated allegation or an unfavorable headline.

Nevertheless, the President believes that it is important to take whatever steps he can to assure complete confidence in the federal law enforcement system, when that system scrutinizes a company in which he once owned an interest, even if the factual justification for special measures is entirely lacking. He believes the integrity of high officials must be without question. Above all, he believes it is critical that his Administration's attention should not be distracted in any way from the vital issues facing the American people.

S 009931

Judge Counsel

1. Cute

2. JAH - ~~Went on~~ make better than Stat. Leg. Comm.

1) Stat. will be passed.

3) Wait go away

4) national to do it than

Memorandum

3. ~~What~~ White House did yesterday - name not

slow look like DOG collaborating

Judge Counsel becomes unstable

Wait go away.

Pres. Reg. v Stat

Damage during Vietnam is at watch it.

JAH DOG taking a real hit

If statute is taking hit

WH counsel

001301

Indefinite
Council

Independent Council

1. 1978 Act Passed - ~~General Penrose~~
~~1992 Congress~~ permitted it to appear
 AG petitioned the Court
 Court Appointed
 AOC renew expenditures
 Truly Independent.
 But Congress let that expire
2. Last Spring I testified in support of
 the reappointment - Strongly Support it
 Senate Panel
 A somewhat different version set of How Council
 take early action
3. Regulation permitting me to appoint a
 Council -
 If I appoint the person who is or is not INDE.
~~If I~~ I must continue to be blamed do it
 The DOJ has to renew expenditures.
 It's not an Independent Council
4. Thus, in the ^{the} Whitewater case - I am going
 to be damned if I do & damned
 if I don't
 My solution - Do it the Right Way
~~Try to~~ make sure the investigation
 is put in the other hands of cases
 people who are experienced, who

have served under different
administrations

5. To Bring in a special posse - clear
relative, gain up - start up is
simply not in best interest of case
Description + Delay -
6. Prospect of the statute passing + covering
the case then at hand depending on
the language ^{may give me app. to person} might mean Court
brought in 3rd person

001303

Whitewater - 4 January
- Main Office -

Heil - goes to DOJ then starts turned
up + not off. Continued on the
for release

- Fed Grand jury in Arkansas
(US Attorney recused) Career prosecutor - was
investigating referral from RTC
on Madison

- This may have relevance to Get - for
investigate of diversion of funds
from Madison to Whitewater.

- Does index for of fed prosecutor - now
Claims now is any career prosecutor
is subject to no contact of politics

Career prosecutor has does -

fact:
The
concerns

Public perception of independent counsel
a la Watergate
Everytime we move, NYT says jump higher

5 020565

- Risk of AG getting out front in naming a counsel but with ldship

~~Under statute AG has to go to ct & ct appts~~

- 5 statute AG can appt

Neil - Turning over papers - bought congl credibility for a much rise

GS - 10 stories - each 2-3 days -
40 days of stories
+ will be at 39%
like 1993 - 2 Gays - Mitzing

DE - but counsel operates differently

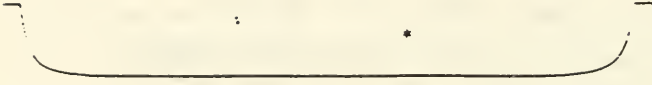
Then criminal prosecutor
They take on a life of their own

Joel - New info - no spl pros
You can turn one at a x

call her own
person conf

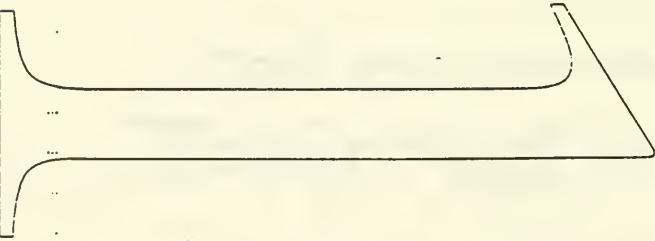
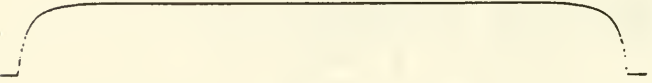


S 020566



HKC enters - looks like a unit
might be inserted -

- Watergate better



Whitewater Mto - 5/annary

Service

No substantive diff in ind. counsel
vs. prosecution

Y App't outside - as counsel or prosecutor
subject to no control & come in &
decide to get someone.

Even if a goodhearted Nussbaum
would worry how he goes back to NYC
& don't infect anyone.

Will have a 3-4 yr investigation. Lies
will be under a microscope

After 3 yrs - goodhearted Nussbaum will have
written 400 page report

Badhearted guy goes in & decides a swell
of corruption & can show some things
of those people close around principal.

Instances where it has worked:

Billy Carter - Paul Curran (a dist friend)
appt'd for G-Susos. Wrote report,
didn't expand & went home.
He's a rare guy

Fort Other special counsel have been patrollers
 Casagrate. Bawling scandal

BM Nike Bower was investigating whether DOJ took
 computer services away from Western
 Not as sexy or sensitive as POTUS
 Casagrate didn't touch conduct of POTUS. It
 was within council's office.

It depends a person

Just 1.2. prosecute pursuant to a statute
 trigger method of out of DOJ.
 Ct wd have probed Walsh
 Can only be dismissed for cause
 Donovan. H Jordan. Walsh

Special Counsel - by the law passed:
 Cox. Jaworski.
 App'd by AG to the Ct.

Republicans (BM Bower) used special counsel
 quite cleverly. They poked people
 Bower/Lacey - as Judge.

Wed

lets get off with we'll have
 spec pros or counsel.

HRC + BC don't want it

- Discuss where we go from here

3N

Kendall will prepare a white paper on the
 Clinton story on Whitewater.

It may take two weeks

- Prepare this - along with Q + A's on
 spec issues. At same appropriate X
 we release this - statement

mm

Take Time ~~and~~ ^{on} Report

6/16

It's diffcult due to conversation vs.
 documents

HI

Discuss of counsel to the highest &
 work of the

Discuss: Production

Press Strategy

Spokes person

Joel
— In a couple hrs — draft of Q+A's
need to be approved by Kendall & HRC

DG ~~highest price for fiction & no facts~~

LT
—

~~Find as much as possible~~
+ Q+A's + argumentative document

Got the argument on why not a special counsel?

- No ~~off~~ evidence of wrongful acts

(~~can't app't someone every time
there's a charge~~)

There has to be a basis

Republican appointee to running investigation.
GT is citizens available to look at ev.
and an Independent AG

Donald Mackay

1971-75

- Nixon / Ford

US Atty

So Dist / IL L

then IL Dept of Tx

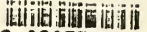
1991 - to DOJ
career

= no credible evidence

- Does over

- They're done enough

Matter of principle / bad politics


 S 020572
VPOTU

5/1

I'll do it - I'm sure it will help.

- need to dump all documents

Lundeen

no & on Whitehouse

PM

Lindsay notes that Kendall
aware of subpoena

5 029573

Whitewater Uto - 9³⁰ Ar

Documents

- 1) 2 pages
- 2) Q + A - TP
- 3) Narrative - comprehensive
- 4) Chronology

Whitewater 5³⁰/_P 1/61

- Beverly Bassette letter - fo
 BB → Waldman

get a lawyer to check law on issuance
 of preferred stock -

Ind. panel of regulators -

P

never

don't know

WH

±



Whitewater 8/7/94

I. Reno: denial —
haven't decided

II

III We cannot adjust the scope of the prosecutor

Politically - fewer assets to lessen the exposure

IV Madison Guaranty not getting special treatment
- Most important thing to prove next week

CS: James taught us the
campaign to beat it this

V PB. Bl. Waldman → to ask to meet C Beverly Barrett
try to poke holes in their story

- Try to get ind. validation from
security firms etc
- Search of Ark. regulator

11 11 11 11 11 11 11 11
 11 11 11 11 11 11 11 11
 S 020577

H- We can't send P.M. now
 - it will come out

Use my item → make sure her story is OK

Tisdale? - in Lindsey's item
 Skip? → with pass
 Po found my lounge?

Quam - arm's length

Wickwarin - Manay Machi Office

H7 - Totem to reopen it - us - impossible
POTS can't -
staff can't

Christopher to talk to POTS
 Bob Bennett

Wick Spoke with Pawson

BN - Indictments will be Betsy Whipple

5 22579

Whitewater Stan
Ward

BW argue against special prosecutor

HV Alan Calvin at DOJ - bad guy
 When Kendall called - when he called
 on speakerphone. were 2 FBI agents + Jim Nixen
 Those guys are f--- vs blue

Open Up on Madison Guaranty

Much as President Clinton might wish, the curious saga of his and his wife's dealings with the owner of a failed Arkansas savings and loan association just won't go away. It keeps popping up in Congressional inquiries and newspaper accounts, each time with a new and unsavory detail added to an already unflattering portrait of the cozy relationship between money and politics in Arkansas.

An important detail, disclosed by The Times's Jeff Gerth and Stephen Engelberg, is that the owner of Madison Guaranty Savings and Loan, James McDougal, helped Mr. and Mrs. Clinton repay a \$50,000 personal debt just when Mr. McDougal needed favorable treatment from state banking officials to stay in business. Mr. McDougal did stay in business, his problems got worse, and in 1989 the bank was taken over by the Federal Government, at a cost to taxpayers of \$60 million.

There is no irrefutable evidence of a quid pro quo. But the Arkansas savings and loan mess, and the Clintons' relationship to it, is not, as the White House keeps saying, an "old" story that has no relevance to Mr. Clinton or his present job. This is a man who rode into Washington on a pledge to end politics as usual, and every time the White House dodges inquiries about the old days in Arkansas, reasonable people begin to wonder about a cover-up and Mr. Clinton's sincerity.

The matter clearly needs ventilating, and if the White House won't do it, two other institutions can. One is the Justice Department, which is already looking into transactions at Madison. The Clintons are not targets of the probe.

The other is the House Banking Committee, whose ranking minority member, Jim Leach, believes that a full investigation of Madison could help the committee frame new rules to prevent future banking disasters. His request has been rebuffed by the committee chairman, Henry Gonzalez, a Democrat who until now has been a tiger on the savings and loan issue. Mr. Gonzalez accuses Mr. Leach of a Republican "fishing expedition."

Mr. Leach has also called Madison a "private piggy bank" for its owners and their influential Arkansas friends, and on this he is surely right. In addition to a string of dubious real estate investments, Madison made large unsecured loans to executives and other insiders.

Madison's practices attracted the attention of Federal auditors, whose 1984 review found "unsafe

and unsound lending practices" that could threaten to drive the bank under. Shortly thereafter, Governor Clinton named Beverly Bassett Schaffer as head of the Arkansas agency charged with overseeing state-chartered savings and loans. Ms. Schaffer had once done legal work for Madison. For the next 18 months, up to the point where Federal regulators moved in, she took no significant regulatory action.

Three months after her appointment, Mr. Clinton came to Mr. McDougal with a request to "knock out the deficit" — Mr. McDougal's words — left over from the Governor's 1984 campaign. It turns out that the deficit wasn't just an ordinary campaign debt, but \$50,000 Mr. and Mrs. Clinton had borrowed from another bank to finance the campaign. Mr. McDougal organized a fund-raiser and the debt was repaid. Federal auditors suspect that some of the donations assembled by Mr. McDougal may have been improperly diverted from the savings and loan.

Bruce Lindsey, the official wheeled out by the White House to answer questions, says the Clinton-McDougal relationship was entirely above board. Others, however, are more than mildly troubled by the fact that Mr. Clinton did not order his regulators to crack down on Mr. McDougal even after he was advised by his own banking commissioner in 1983 that the savings and loan operator was engaged in imprudent banking practices.

Suspicious that Mr. Clinton was excessively kind to his friend — at great cost, eventually, to the taxpayers — are further reinforced by the fact that Mr. McDougal had done other favors for the Clintons, including making them 50-50 partners in Whitewater Development, a real estate company for which Mr. McDougal put up most of the money. The venture ultimately failed, and the Clintons lost money. But that doesn't make their financial ties to Mr. McDougal seem any more savory.

Based on what's publicly known, there's probably not a crippling scandal here. But the White House is behaving as if there were. For example, Federal investigators say they have received little cooperation in a search for files they suspect were taken from the office of Vincent J. Foster, a White House aide who killed himself. Investigators want to know if one of those files dealt with Mr. McDougal and Whitewater.

This defensiveness isn't helping anyone. Mr. Clinton — and Mr. Gonzalez — owe it to the public to clear the air about Madison and its influential Arkansas friends.

This is important to be on top of. Bassett did a good job in camp. on this — can she now?

(transcription of handwritten notes of President Clinton)

New York Times
Dec. 20, 1993

1/12/87
Kashel

I. SHOULD AN INDEPENDENT COUNSEL BE REQUESTED BY THE WHITE HOUSE?

- A. Legal considerations
- B. Political considerations

1. What is the public perception? How much is the credibility of the White House being harmed?

II. IF A REQUEST IS TO BE MADE, WHAT SHOULD IT CONTAIN?

- A. Should the request attempt to impose scope limitations?
- B. Should the request attempt to impose time limitations?
- C. Should the request attempt to suggest who the independent counsel should be?
- D. Who should sign the letter?

III. THE WISDOM OF ATTEMPTING TO IMPOSE LIMITATIONS

- A. Desirability of limiting the investigation
- B. Limitations will not be enforceable
- C. Extent benefit of asking is eroded by seeming to make request conditional
- D. Complicated subject matter
- E. Low "trigger" standard ("reasonable grounds to believe that further investigation is warranted") may insure that we create another setback for ourselves
- F. Is it better to let Attorney General make these decisions (and perhaps later request right to present argument to the attorney she designates in hopes of persuading that attorney)?

V. TWO DRAFT LETTERS (LETTER WILL BE PUBLIC)

- A. Conditional request (Draft I)
- B. Unconditional request (Draft II)


 S 020797

The Honorable Janet Reno
Attorney General
Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D. C. 20530

DRAFT I

DRAFT

Dear General Reno:

Under the independent counsel provisions of the Ethics in Government Act of 1978, the Attorney General was required to conduct a "preliminary investigation", as defined in the Act, to determine whether further investigation was warranted of possible federal law violations by persons subject to the Act. This investigation was to be completed within 90 days, with a 60 day extension possible. If the Attorney General determined that there were no reasonable grounds to believe that further investigation was warranted, the Attorney General notified the Special Division (a court created by the Act to appoint special counsel), and that ended the matter. If, however, the Attorney General determined that there were reasonable grounds to believe that further investigation was warranted, the Attorney General so notified the Special Division, which then appointed an independent counsel to conduct such an investigation. The Act expired on December 19, 1992.

The President has fully cooperated with a federal grand jury in Little Rock which he understands to be investigating matters that may be potentially connected to Whitewater Development Company, an entity in which he and the First Lady once had an ownership interest. There have been no credible or even specific allegations of wrongdoing by the Clintons in connection with

S 020798

DRAFT

Whitewater. It was a losing investment, from which they received nothing of value, and all loans which they signed for were repaid (none of these were S&L loans). The investigation is being conducted by career Department of Justice prosecutors, after the United States Attorney for the Eastern District of Arkansas recused herself. There is no reason to believe that this investigation is not thorough, energetic, professional, and even-handed.

However, there has been some publicity in recent days suggesting, incorrectly, that there are grounds to replace the current investigation with some kind of independent counsel. While the President does not believe there is any reason to impugn the integrity and aggressiveness of the current investigation or that there are any reasonable grounds to a justify sweeping investigation by an independent counsel, he believes it is desirable to take whatever steps he can to assure complete confidence in the federal law enforcement system, when that system scrutinizes a company in which he once owned an interest. While there is presently no legislation in effect, it seems appropriate to attempt, insofar as possible, to follow the provisions of the Ethics in Government Act of 1978.

Accordingly, the President has directed me to request you to appoint a respected and qualified attorney, who is not a member of the Department of Justice or an employee of the federal government, to conduct a "preliminary investigation," as defined under the Act, of the Whitewater Development Company and possible

5 020799

DRAFT

federal law violations arising out of its affairs which, under the Act, might justify appointment of an independent counsel.

The President's request differs, of course, in a significant way from the procedures of the Act: under the old law, you yourself would be mandated to conduct the "preliminary investigation". Given the President's desire to do all he can to assure public confidence in the federal law enforcement process, he believes it appropriate here to request that you appoint a respected private attorney to conduct this "preliminary investigation" and report to you, so that you and that attorney may take such action as you deem appropriate.

In view of the gravity of the many matters faced by the President and the need for a speedy resolution here, I respectfully request that the preliminary investigation be conducted within 90 days by the person you appoint.

Sincerely,

Bernard Nussbaum

S 020800

The Honorable Janet Reno
Attorney General
Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D. C. 20530

DK Draft
DRAFT II~~DRAFT~~

Dear General Reno:

The President has fully cooperated with a federal grand jury in Little Rock which he understands to be investigating matters that may be potentially connected to Whitewater Development Company, an entity in which he and the First Lady once had an ownership interest. There have been no credible or even specific allegations of wrongdoing by the Clintons in connection with Whitewater. It was a losing investment, from which they received nothing of value, and all loans which they signed for were repaid (none of these were S&L loans). The investigation is being conducted by career Department of Justice prosecutors, after the United States Attorney for the Eastern District of Arkansas recused herself. There is no reason to believe that this investigation is not thorough, energetic, professional, and even-handed.

However, there has been some publicity in recent days suggesting, incorrectly, that there are grounds to replace the current investigation with some kind of independent counsel. While the President does not believe there is any reason to impugn the integrity and aggressiveness of the current investigation or that there are any reasonable grounds to justify a sweeping investigation by an independent counsel, he believes it is desirable to take whatever steps he can to assure complete


S 020801

DRAFT

confidence in the federal law enforcement system, when that system scrutinizes a company in which he once owned an interest.

Accordingly, the President has directed me to request you to appoint a respected and qualified attorney, who is not a member of the Department of Justice or an employee of the federal government, to conduct an appropriate independent investigation of the Whitewater matter. The independent counsel provision of the Ethics in Government Act of 1978 expired on December 15, 1992. In the absence of supervening legislation, it seems appropriate to request that the investigation be conducted, insofar as possible, in accordance with the procedures of the expired Act.

In view of the gravity of the many matters faced by the President and the need for a speedy resolution here, I respectfully request that the preliminary investigation be conducted within 90 days by the person you appoint.

Sincerely,

Bernard Nussbaum

5 020802

February 9, 1996, Friday, PM cycle

SECTION: Washington Dateline

LENGTH: 825 words

HEADLINE: Arkansas Regulator Says She Was Approached About Backing Clintons

BYLINE: By LARRY MARGASAK, Associated Press Writer

DATELINE: WASHINGTON

BODY: A former Arkansas securities commissioner says she resisted efforts by a White House aide and two men with Clinton administration connections to get her to make public statements supporting the president and first lady on Whitewater.

Beverly Bassett Schaffer said in an interview Thursday that her response was "No way. I don't want to be drawn into the political response." She added, "I was sick" of talking about Whitewater.

The contacts with Schaffer were made around the time a Whitewater prosecutor was appointed and they tracked a strategy laid out at a Jan. 7, 1994, White House meeting. According to notes of that meeting, Clinton aides were greatly concerned about what Schaffer would say regarding her discussions with first lady Hillary Rodham Clinton on whether the savings and loan at the center of Whitewater could issue stock.

As the state securities commissioner, Schaffer concluded that the S&L - represented by Mrs. Clinton's law firm - could issue stock. Schaffer had said during the 1992 presidential campaign she wasn't pressured by Mrs. Clinton and had only one conversation with her.

The handwritten notes of the Jan. 7 meeting were taken by Mark Gearan, who was President Clinton's communications director at the time. The White House this week turned over the notes, months after they were requested, to the Senate Whitewater committee. The panel released them Thursday.

White House lawyer Jane Sherburne told the committee Thursday that the notes had been difficult to locate, because Gearan inadvertently took them with him when he became Peace Corps director in September.

Gearan quoted White House aide Harold Ickes as saying, "Bev. Bassett is so (expletive) important. If we (expletive) this up, we're done."

Ickes is quoted as saying no emissaries from Washington should be sent to Arkansas to contact Schaffer because "it will come out." PAGE 3 The Associated Press, February 9, 1996

"Let's not talk it to death - let's just get it done," Gearan quotes Ickes as saying. Another time, Ickes is quoted as saying, "item by item - make sure her story is OK."

Asked about her interpretation of the meeting, Schaffer said, "It looks to me like they were trying to figure out, 'Who can talk to her? Who is her friend? They were desperate to try to find a way, getting questions about all this, to deal with it.'"

Describing the contacts, Schaffer said:

-In December 1993, at a University of Arkansas basketball game, White House aide Bruce Lindsey talked to her husband, Archie, about whether she was willing to speak out publicly.

-Some time later her husband was called by Skip Rutherford, an Arkansas public relations executive and friend of the Clintons. Rutherford asked Archie Schaffer what he thought of his wife having a news conference on Whitewater.

-She was approached by a lawyer at her firm, John Tisdale, who suggested that he put together a factual list of documents on Whitewater. Tisdale did so, and "I imagine he gave them to Bruce" (Lindsey), who worked at the firm before going to the White House.

The Gearan memo mentions Tisdale and Rutherford as people who might talk to Schaffer to make sure her story "is OK."

Gearan's notes prompted Sen. Orrin Hatch, R-Utah, to question whether the Clinton White House had been trying to influence the statements of a Whitewater witness.

But White House spokesman Mark Fabiani said presidential aides were simply seeking to have Schaffer repeat comments she made that were supportive of Mrs. Clinton's Whitewater role.

The January meeting apparently stemmed from Clinton's request to aides 2 weeks earlier asking whether Schaffer would reiterate her comments.

Separately, the Clintons' private Whitewater lawyer, David Kendall, and Sherburne testified Thursday about the mysterious appearance in the White House residence of the billing records outlining Mrs. Clinton's work for

Madison Savings and Loan. Madison was owned by the partner of the Clintons in the Whitewater land venture, and failed at a huge cost to taxpayers.

Sherburne said that when the records surfaced, she raised the possibility of having them checked for fingerprints before they were copied. She said the idea was rejected because the Clintons, the Senate committee and others needed the material immediately.

A Clinton aide, Carolyn Huber, has said she discovered the records during the first two weeks in August, laying on a table in plain view. Not knowing what they were, she packed them away and rediscovered them Jan. 4.

White House logs show Mrs. Clinton was visited Aug. 10 by an attorney whose clients include Seth Ward, an Arkansas businessman whom bank regulators say was a "straw" purchaser in a "sham" real estate deal that cost Madison millions of dollars, The Washington Post reported in today's editions.

The attorney, Alston Jennings, told the Post he was asked to meet with Mrs. Clinton by Kendall, but that the two didn't discuss Ward or the real estate deal. Kendall refused to comment.

LANGUAGE: ENGLISH

LOAD-DATE: February 9, 1996

1/10/94

C O N F I D E N T I A LSECOND DRAFTSummary of arguments re WhitewaterNo special counsel:1. For this position:

- a) The Clintons have done nothing wrong. There is no allegation that would permit the Attorney General ("AG") to propose appointment of independent counsel ("IC"). Appointment of Special Counsel ("SC") implies possible wrongdoing by The President and The First Lady, and tarnishes the Presidency.
- b) Until last week, the White House ("WH") was not getting The President's side of the story out. The more aggressive effort by the WH and others in this regard will begin to shift the tide of press and other opinion.
- c) To agree to a SC will hand a victory to our opponents.
- d) Although, in theory, a SC operates under the jurisdiction of and reports to the AG, in fact, a SC will operate virtually independent of the AG. By contrast the career prosecutors in the Department of Justice ("DOJ") who are handling the matter must report to higher authority in DOJ.
- e) A SC will have considerable resources at his/her disposal. The scope of the SC's investigation may be substantially broader than that of the current DOJ investigation. And there is no limit on how long he/she can investigate.
- f) A SC investigation may result in focus on friends and associates of The President, begin to "squeeze" them, and may subject some to indictment.
- g) Although we suspect a great deal of leakage by DOJ under the current process, the SC is also subject to leaks.
- h) Appointment of a SC will not necessarily preclude Congressional hearings on the matter.

S 020884

- 1) Even if an independent counsel statute is enacted, there is not sufficient evidence to warrant the AG recommending appointment of an IC. Therefore, the AG will not recommend appointment of an IC under the new statute if the facts do not warrant it.

2. Against this position:

- a) The critical issue is the implication of cover up. If, as the WH says, neither The President nor The First Lady have done anything wrong, why the continued resistance to appointment of a SC? Putting Madison/Whitewater before a SC will substantially end the public controversy and permit The President, the WH, the Congress and the public to refocus on health care and the rest of the substantive agenda.

- No matter how aggressively the WH presents The President's position, questions will continue to be raised by the opposition and the press, which will continue to call for a SC.

- Even if the WH is entirely consistent with the information it provides to the public, since we have only partial information about Madison/Whitewater, there will be continued inconsistent information from other parties involved in Madison/Whitewater which will provide the basis for continuing press stories and calls from Congress for a SC.

- b) If the AG does not appoint a SC (at The President's request), it may well be inevitable that she will recommend appointment of an IC (assuming enactment of an independent counsel statute), who, under the prior statute, was appointed by a 3 judge panel, who, in turn, are appointed by the Chief Justice of the Supreme Court.

- Congress will probably enact a new independent counsel statute. If after the statute is enacted, the AG refuses to recommend an independent counsel ("IC"), she will be accused of buckling to WH pressure.

- Assuming the foregoing, it is probably preferable to have an investigation conducted by a SC, appointed by the AG, rather than by an IC appointed by the 3 judge panel.

If the AG recommends appointment of an IC, the appointment (if the new law is the same as the expired law) will be made by a 3 judge court appointed by the Chief Justice of the Supreme Court. The current panel under the expired independent counsel statute is: Judge David Sentelle (DC Circuit, appointed by President Johnson); Sr. Judge John Butzner (4th Circuit, appointed by President Reagan); and Sr. Judge Joseph Sneed (9th Circuit, appointed by President Nixon).

An IC operates completely independent of the jurisdiction of the AG. (As with a SC or the current senior DOJ prosecutor, leaks by the IC are certainly possible. Not only is there little, if any, control as to the scope of an IC conducted investigation (as with a SC), there is no specific limit on the length of time the IC can take to conduct the investigation and issue his/her report.)

c) Congressional action:

*

d) The President's political capital will continue to erode. The Madison/Whitewater matter is open ended -- the Clintons do not (and will never) possess all of the information. Thus the WH will continually be on the defensive responding to continuing new "revelations" and questions.

3
S 020886

thereby seeming to be out of control and attempting to cover up.

- e) The Presidential agenda. The continuing public controversy about Madison/Whitewater diverts attention (both that of the WH and that of the Congress and the public) from The President's agenda.

- Our polling shows that adoption of the proposed Health Security Act will greatly depend on public confidence in The President and The First Lady. This controversy undoubtedly adversely affects the public's confidence, thereby jeopardizing the substantive agenda.

Public release of all Clinton documents re Whitewater

- a) Partial release of documents, will merely increase press speculation and the demand for a SC.
- b) While public release of all documents may reduce the immediate pressure for a SC, it may result in many additional questions which, ultimately, will probably give rise to a call for either a SC or an IC.
- Since the Clinton documents don't encompass all of the Whitewater/Madison activities, release of those documents can't answer all questions, but will undoubtedly provide the basis for continual questions and speculation.

4
S 020887

M E M O R A N D U M

TO: Whitewater group

FROM: Harold Ickes


DATE: 9 January 1994

RE: Assignments

1. Talking points (counsel/MW)
2. Q&A (counsel/BL/MW, 1/5¹)
3. 2-3 page argument why no special counsel (counsel, MW)
4. History of special counsels/independent counsels (counsel, 1/6)
5. "Chronology" (counsel, BL, MW)
6. Op ed piece (counsel, BL, MW 1/8)
7. Congressional op ed piece (counsel, BL, MW)
8. Response to Saffire piece (counsel, BL, MW 1/6)
9. Memo on independent counsel statute (counsel 1/8)
10. Synopsis of Whitewater/Madison Guaranty matter (counsel, BL, MW, 1/7)
11. Memo re statute of limitations for civil actions (counsel - assigned 1/8²)
12. Review, on daily basis, all articles from major newspapers and statements made on major electronic media re Whitewater and prepare memo regarding inaccuracies, etc. (counsel, BL, MW)

¹ These dates refer to the date of the draft document.

² Indicates date the assignment was made.


S 020888

13. Research issue of whether then Governor Clinton used political or other pressure to see that Madison Guaranty be given special consideration (counsel, BL, PB, MW - assigned 1/7)
14. Reference in 1/8 press that Chris Wade, Arkansas realtor has document re Whitewater, but won't release unless President Clinton asks for them to be released (MW - assigned 1/8)
15. Memo re failure to take deduction on tax return for Whitewater losses (MW - assigned 1/8)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
S 020889

M E M O R A N D U M

TO: Whitewater group

FROM: Harold Ickes

DATE: 10 January 1994

RE: Assignments

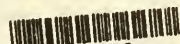
1. Talking points (counsel/MW)
2. Q&A (counsel/BL/MW, 1/5¹)
3. 2-3 page argument why no special counsel (counsel, MW)
4. History of special counsels/independent counsels (counsel, 1/6)
5. "Chronology" (counsel, BL, MW)
6. Op e^d piece (counsel, BL, MW 1/8)
7. Congressional op ed piece (counsel, BL, MW)
8. Response to Safire piece (counsel, BL, MW 1/6)
9. Memo on independent counsel statute (counsel 1/8)
10. Synopsis of Whitewater/Madison Guaranty matter (counsel, BL, MW, 1/7)
11. Memo re statute of limitations for civil actions (counsel - assigned 1/8¹)
12. Review, on daily basis, all articles from major newspapers and statements made on major electronic media re Whitewater and prepare memo to be promptly circulated to the group regarding inaccuracies, etc (counsel, BL, MW)
13. Contact select members of Congress about public support (PG)

These dates refer to the date of the draft document.

Indicates date the assignment was made.

S 020819

14. Research issue of whether then Governor Clinton used political or other pressure to see that Madison Guaranty be given special consideration (counsel, BL, pp, MW - assigned 1/7)
15. Reference in 1/8 press that Chris Wade, Arkansas realtor has document re Whitewater, but won't release unless President Clinton asks for them to be released (MW - assigned 1/8)
16. Memo re failure to take deduction on tax return for Whitewater losses (MW - assigned 1/8)


S 020820

THE WHITE HOUSE
WASHINGTON

January 17, 1994

MEMORANDUM FOR HAROLD ICKES
DEPUTY CHIEF OF STAFFFROM: W. NEIL EGGLESTON
ASSOCIATE COUNSEL TO THE PRESIDENTRE: STATUTE OF LIMITATIONS IN ACTIONS BROUGHT BY THE
CONSERVATOR OF A FINANCIAL INSTITUTION

There has been substantial discussion by Republican Members of Congress about the statute of limitations to recover against those who may have committed a tort or breach of contract involving a financial institution that has since been taken over by the Resolution Trust Corporation ("RTC").

Title 12, United States Code, Section 1441a, was amended by the Resolution Trust Corporation Completion Act, signed by the President on December 17, 1993. (A copy of the pertinent section of the amendment is attached.)

That Act extended the statute of limitations from three to five years for torts committed against financial institutions that have been taken over by the RTC. Thus, the RTC must bring a tort claim within five years after it was appointed a conservator or receiver.

For the purpose of the extension of the statute of limitations, the Act defines a tort claim as "a claim arising from fraud, intentional misconduct resulting in unjust enrichment, ~~or intentional misconduct resulting in substantial loss to the institution.~~" (This definition is narrower than the traditional definition of a tort.)

~~The statute of limitations for breach of contract claims is six years after the institution was taken over by the RTC.~~ 12 U.S.C. Sec. 1821(d)(14)(A)(i)(I).


Madison Guaranty was taken over by the federal government on or about March 2, 1989. As a result of the new Act, if the RTC sues on a covered tort claim, the action must be brought by March 2, 1994. Without the new Act, the statute of limitations for all tort claims would have expired on March 2, 1992. If the RTC sues on a contract claim, the action must be brought by March 2, 1995.

The type of action brought against outsiders in financial institution cases is usually a tort claim.

The statute of limitations for criminal violations involving a financial institution is ten years from the date the crime occurred. 18 U.S.C. Sec. 3293. The date that the institution was taken over by the government is not relevant to the computation of the criminal statute of limitations.

W.N.E.

cc: Bernard W. Nussbaum


S 009909

(3) Competitive bidding.--The Administrator of General Services, in compliance with regulations of the Resolution Trust Corporation, may bid on property described in the notice required under paragraph (1) that is otherwise subject to competitive bidding.

[*4] Sec. 4. EXTENSION OF STATUTE OF LIMITATIONS. ~~4~~

(a) In General.--Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by adding at the end the following new paragraph:

"(14) Extension of statute of limitations.--

→ "(A) Tort actions for which the prior limitation has run.--

"(i) In general.--In the case of any tort claim--

"(I) which is described in clause (ii); and

"(II) for which the applicable statute of limitations under section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act has expired before the date of enactment of the Resolution Trust Corporation Completion Act;

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

"(ii) Claims described.--A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

"(B) Tort actions for which the prior limitation has not run.--



"(i) In general.--Notwithstanding section 11(d)(14)(A) of the Federal Deposit Insurance Act, in the case of any tort claim--

"(I) which is described in clause (ii); and

"(II) for which the applicable statute of limitations under section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act has not expired as of the date of enactment of the Resolution Trust Corporation Completion Act;

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

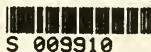
"(ii) Claims described.--A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from gross negligence or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct relating to the institution.

LEXIS·NEXIS  LEXIS·NEXIS  LEXIS·NEXIS

Services of Mead Data Central, Inc.

11-021995107

KJCL 5 : 15-51-1



S 009910

18

* "(C) Determination of period.--The period determined under this subparagraph for any claim to which subparagraph (A) or (B) applies shall be longer of--

"(i) the 5-year period beginning on the date the claim accrues (as determined pursuant to section 11(d)(14)(B) of the Federal Deposit Insurance Act); or

"(ii) the period applicable under State law for such claim.

"(D) Scope of application.--Subparagraphs--(A) and (B) shall not apply any action which is brought after the date of the termination of the Corporation under subsection (m)(1)."

(b) Technical and Conforming Amendment.--Section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)(A)(ii)) is amended by inserting "(other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act)" after "any tort claim".

[*5] Sec. 5. LIMITATION ON BONUSES AND COMPENSATION PAID BY THE RTC AND THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD.

(a) In General.--Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding after subsection (w) (as added by section 3(a) of this Act) the following new subsection:

"(x) Limitation on Excessive Compensation and Cash Awards.--

"(1) Establishment of performance appraisal system required.--The Corporation shall be treated as an agency for purposes of sections 4302 and of title 5, United States Code.

"(2) Procedures for payment of cash awards.--

"(A) In general.--Sections 4502, 4503, and 4505a of title 5, United States Code, shall apply with respect to the Corporation.

"(B) Limitation on amount of cash awards.--For purposes of determining the amount of any performance-based cash award payable to any employee of the Corporation under section 4505a of title 5, United States Code, the amount of basic pay of the employee which may be taken into account under such section shall not exceed the amount which is equal to the annual rate of basic pay payable for level I of the Executive Schedule.

"(3) All other cash awards and bonuses prohibited.--Except as provided paragraph (2), no cash award or bonus may be made to any employee of the Corporation.

"(4) Limitations on cash awards and bonuses.--No employee shall receive any cash award or bonus if such employee has given notice of an intent to resign to take a position in the private sector before the payment of such cash award or bonus or accepts employment in the private sector not later than 60 days after receipt of such award or bonus.

LEXIS·NEXIS® LEXIS·NEXIS® LEXIS·NEXIS®

Services of Mead Data Central, Inc.

515-0272727

1-15-84 5:14 PM

11699911

12

CONFIDENTIAL

1

1 UNITED STATES DEPARTMENT OF THE TREASURY
2 OFFICE OF INSPECTOR GENERAL

3 -----x

4 In the Matter of: :

5 WHITE HOUSE CONTACTS :

6 CONCERNING THE MADISON :

7 GUARANTY SAVINGS AND LOAN :

8 Harold Ickes, Interviewee :

9 (CLOSED)

10 -----x

11

12

13

14

Room 982

15

800 17th Street, Northwest

16

Washington, D.C.

17

18

Friday, July 15, 1994

19

20

The above-entitled interview was conducted,

21

pursuant to notice, at 6:40 p.m.

22

23

24

25

CONFIDENTIAL

2

1 APPEARANCES:

2

3 For the Department of the Treasury:

4 FRED COCO

5 Department of the Treasury

6 Office of Inspector General

7 1201 Constitution Avenue, N.W.

8 ICC Building, Room 7316

9 Washington, D.C. 20220

10

11 For the Resolution Trust Corporation, Office of Inspector

12 General:

13 SARA HERLIHY, Special Agent

14 1735 N. Lynn Street, Room 1163

15 Rosslyn, Virginia 22209

16

17 For the Interviewee, Harold Ickes

18

19 AMY R. SABIN, ESQUIRE

20 ROBERT BENNETT, ESQUIRE [via speakerphone]

21 Skadden, Arps, Slate, Meagher & Flom

22 1440 New York Avenue, Northwest

23 Washington, D.C. 20005-2107

24

25

CONFIDENTIAL

3

P R O C E E D I N G S

[6:40 p.m.]

MR. COCO: Mr. Ickes, I am Special Agent Fred-Coco with the Treasury Office of Inspector General.

MS. HERLIHY: And I'm Sara Herlihy, the RTC Inspector General's Office.

MR. COCO: Here's my credentials. This administrative investigation is at the request of Secretary Bentsen in the Office of Government Ethics and has to do with White House contacts from Treasury or RTC officials on the Madison Savings & Loan/Whitewater matter.

And, basically, before we begin, I'd like to place you under oath.

Whereupon,

HAROLD ICKES,

a witness, was called for examination, and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. COCO:

Q Basically, what is your current position and the dates of those positions?

A I'm an assistant to the President of the United States and Deputy Chief of Staff at the White House.

Q How long have you held that position?

A Since approximately January 3rd, 1994.

CONFIDENTIAL

4

1 Q Thank you. Can you please detail any contacts
2 between yourself and any Treasury or RTC officials
3 concerning the Madison Savings & Loan and/or Whitewater?.

4 A Well, when you say detail, what do you mean?

5 Q Contacts, meetings, conversations.

6 A Yes, but when you say detail, what do you mean?

7 MS. HERLIHY: Describe. If you could describe and
8 probably what would be most helpful is starting with the
9 first contact or communication you can remember having on
10 the matter, who you talked to, what was the substance.

11 MS. SABRIN: Maybe we could do it by timeframe.
12 Can you -- he just told he started at the White House
13 January 3rd. So maybe we could --

14 MS. HERLIHY: Right. So starting with the first
15 one he can remember. And when we set that timeframes, then
16 we can go from there.

17 THE WITNESS: Well, first, why don't you repeat
18 the question?

19 BY MR. COCO:

20 Q Okay. Can you detail your contacts in this matter
21 from the first conversation, meeting, starting out with your
22 time and your position, January 4th, 1994.

23 A With whom?

24 Q With Treasury or RTC officials.

25 A In connection with what?

CONFIDENTIAL

5

1 Q The Madison Savings & Loan and Whitewater matter.

2 A I remember a contact -- several contacts with
3 Roger Altman, a contact -- several contacts with Jean
4 Hanson, and one contact with Josh Steiner.

5 Q Can you tell us which one occurred first and when?

6 A The first contact occurred with -- to the best of
7 my recollection, I think occurred with Roger Altman.

8 Q When was that?

9 A It was shortly before -- either in late January or
10 early February of 1994.

11 Q Can you remember the date?

12 A I don't recall the exact date.

13 Q Okay. What was the contact? Was it a meeting,
14 phone conversation?

15 A As I recall, it was a phone conversation.

16 Q And what was the content of that phone
17 conversation?

18 A What was the context?

19 Q Content.

20 A Content. As I recall, Mr. Altman called me,
21 telephoned me to ask to arrange a meeting with him and the
22 General Counsel from the Treasury Department, as I recall,
23 with Mr. McClarty.

24 Q And what was the stated purpose?

25 A I don't recall that he stated a purpose. He may

CONFIDENTIAL

6

1 have, but as I sit here today, I don't recall whether he did
2 or not.

3 Q Okay. And when was that meeting for?

4 A He asked me to set it up as soon as I could
5 arrange it with Mr. McClarty.

6 BY MS. HERLIHY:

7 Q Did he indicate other people that he wanted to be
8 in attendance at the meeting?

9 A He indicated that he was going to bring his
10 General Counsel with him. When I say his General Counsel,
11 the General Counsel of the Treasury at least then, is what I
12 recall him saying and he specifically said he wanted a
13 meeting with Mr. McClarty and me.

14 BY MR. COCO:

15 Q Did that meeting take place?

16 A The meeting took place.

17 Q When was it?

18 A I recall it was early in February, the first,
19 second or third, sometime around there.

20 Q And who else was at this meeting?

21 A Well, to the best of my recollection, Mr. McClarty
22 did not attend the meeting, although it was held in his
23 office, and I recall his being there in his office early in
24 the meeting, but not participating in the meeting. Mr.
25 Altman, myself, Ms. Hanson, Mr. Nussbaum. I think Ms.

CONFIDENTIAL

7

1 Williams was there and I think Neil Eggelston was there. I
2 don't recall anybody else.

3 Q Would this be February 2nd, 1994, this meeting?

4 A It would have been around that time.

5 Q You said Mr. McClarty was there?

6 A It was in his office. He was there in his office.
7 It's a fairly large office by White House standards and I
8 recall his being near his desk at the other end of the room.
9 I don't recall his participating in the meeting and my best
10 recollection is that he left his office soon after the
11 meeting started.

12 Q So did he participate at all in the meeting?

13 A Not to my -- not to my recollection.

14 Q What was discussed at this meeting?

15 A Mr. Altman, as I recall, raised the issue of the
16 upcoming -- the possible -- well, not the possible, but the
17 fact that the statute of limitations, which I knew nothing
18 about at the time, of the RTC in connection with an
19 investigation that was apparently being conducted by the RTC
20 on Madison Whitewater was about to expire.

21 Q And what else? Was it just the statute of
22 limitation being discussed?

23 A That was -- as I recall, that was almost the
24 entirety of the meeting. There was some discussion at the
25 end of the meeting, very short discussion, about Mr. Altman

1 indicated that he was thinking about recusing himself.

2 Q And what was stated on that portion of the
3 conversation, his recusal?

4 A Stated by whom?

5 Q By anyone at the meeting.

6 A To the best of my recollection, it was a general
7 conversation. He raised it that he was considering recusing
8 himself. There were some questions and he said that he
9 would be making a decision in the next several days whether
10 or not to recuse himself.

11 BY MS. HERLIHY:

12 Q What were the questions, if you can recall?

13 A There were questions about the statute of
14 limitations, when it expired, under what conditions it
15 expired. I don't think anybody in the room other than Mr.
16 Altman and Ms. Hanson had a clear picture of what the
17 statute of limitations situation was. And I think there
18 were some questions about why Mr. Altman was considering
19 recusing himself.

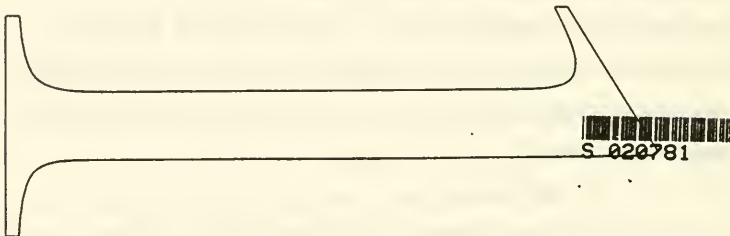
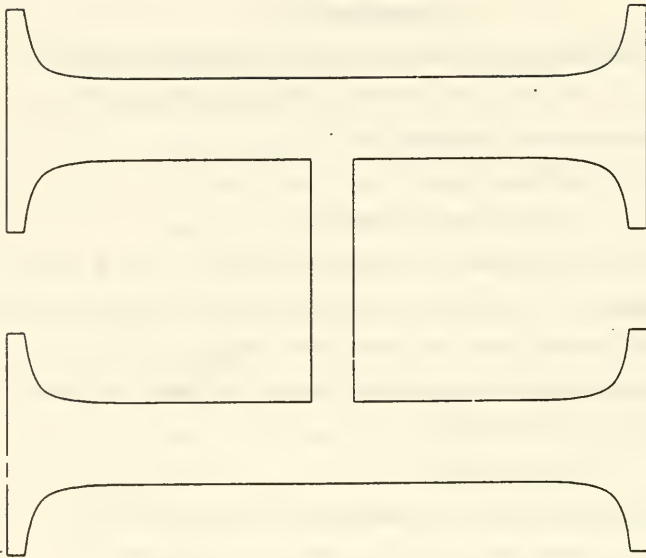
20 BY MR. COCO:

21 Q Was any information shared by Mr. Altman? Was any
22 documentation provided?

23 A No, not that I recall.

24 Q Was he --

25 A When you say provided, provided to any of the



S 020781

HI ^{meets at home several times/week} Recalls informing both WJC and APR
 separately that Alkman was going to

D.A. 24

- on Whitecenter, Maggie told me that he was "paralyzed" by it
- if we don't solve this "within the next two days" ... you don't have to worry about her schedule in health care
- we went over to see George on Whitecenter yesterday; to hope for "living the hell"
- Maggie's strong inference was that he with will trying to negotiate the scope of an independent counsel with her to making summer difficulty
- the "don't want (the counsel) looking into 20 years of public life in Arkansas"

2987

191

D

- this Whitewater Situation is one big mess
- Administration perceived as ~~something~~; there must be something to hide
- big issue is independent prosecutor; don't we need one? does it require reauthorizing the Special Prosecutor law or should there
- just pick someone to advise Justice?
- lots of speculation that HRC is the one who handled this in Arkansas (who knew?)
- meanwhile, the President's mother died, and he flew off to Arkansas
- with Pearl engaged in his and mishandling it, for the President's lawyer to persuade DOJ to issue subpoenas for the documents so they won't be subject to trial, a habeas corpus
- what called me is yesterday to discuss it; he used his judgment is superb; the situation required a "cut your losses" strategy, tells me how he did that during the "Breakfast Club" interrogations; talked about Nixon's incredible failure to cut his losses about the press getting "too involved" in a situation not deducing itself to bringing someone down
- he had been asked to come to WH to speak to President about Whitewater (together with Peick, Riley and Babbitt); but Clinton's busy rushed over to come but not to do it because they require him to be here; he took that advice

P.P.

1/5/94

D

- Sadly, the Whitewater Affairs is exploding into a ~~for~~ press frenzy
- it's really a ~~handy~~ doorway to the press which we created world of Washington
- it's so unlikely that there's anything there; the news brought about economic self interest to his life
- the allegation re: US-Mat. Madison Ltd diverted funds to pay off a + ~~some~~ Clinton campaign debt; (2) that it also illegally diverted its funds into the Whitewater real estate venture; (3) that as Governor, he abused his office blocking regulator to lay off Madison (a local Kenzie affair), which contributed to its collapse
- unfortunately we've mislabeled part of this: handling of the Clinton financial crisis in post Vice President office re: political business; delays in providing info to DOJ; refusal to support an independent prosecutor
- thank God that the P- had been kept out of this; because, in a stroke of luck, the P- referred his matter to DOJ for possible criminal prosecution 2 1/2 weeks ago; and that not happened, the P- would have been engulfed in all this

0007

2989

Siloff - tomorrow

Randy Coleman -

(Hale lawyer)

says he had
2 conversations last

8/16-8/19
93 Aug = Bill Kennedy;

called to inform of Hale's

allegations; mentioned matters of
interest.

2-3 days later, Kennedy
returns calls = someone on
line (Beth Nolan - ethics
compliance) Went thru
allegations.

Coleman seeking a mtg

= Kendy & never got it

What did Kendy do in this

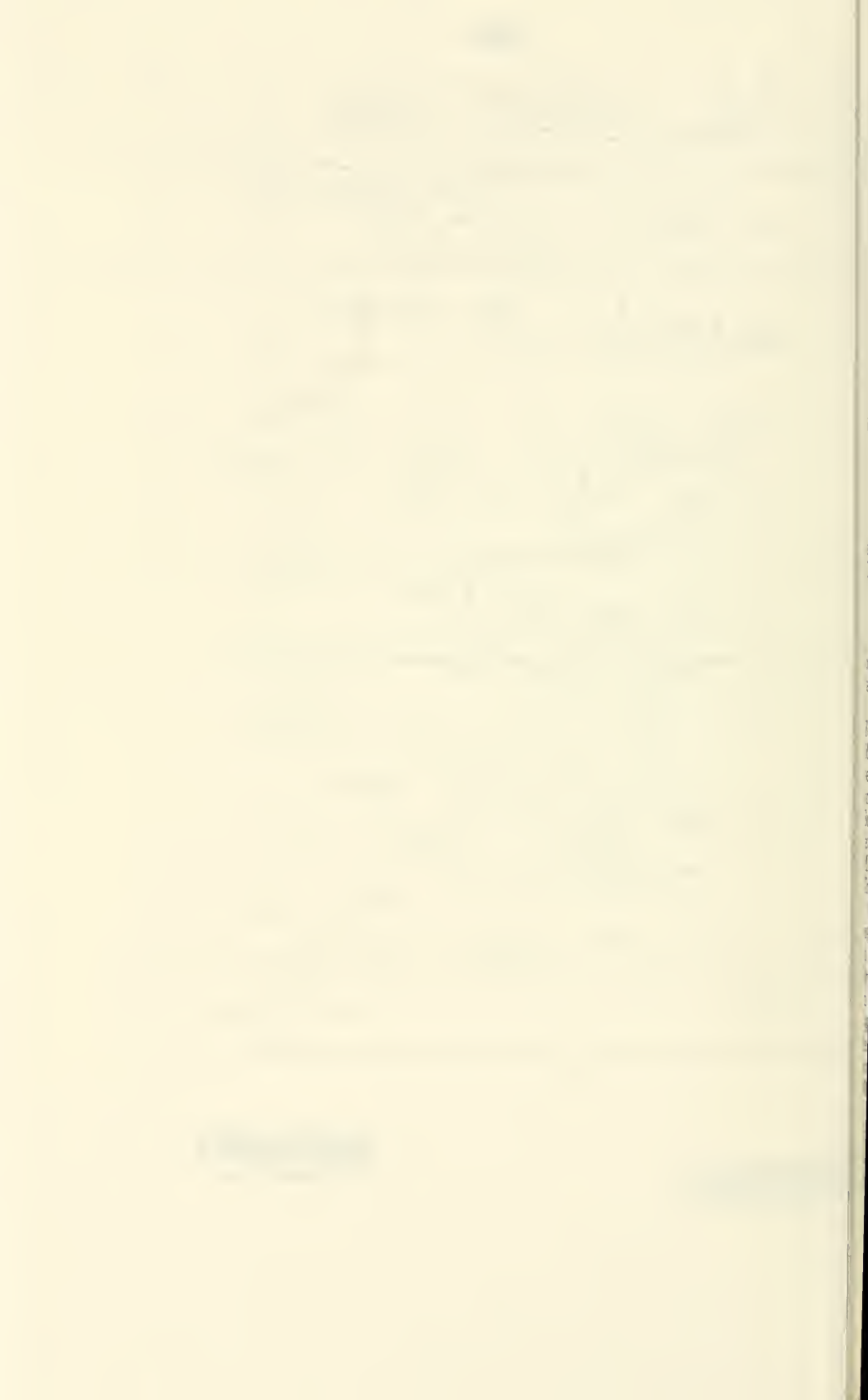
wife —
contact

→ US atty cr. DOJ?
(no)

→ if it was both before -

Why was she in
line? —

→ what was Kendy's reason
in calling back.



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, APRIL 24, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
*Washington, DC.***

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Good morning. The Committee has essentially completed the first two phases of our investigation—the Vince Foster Phase and the Washington Phase.

During the Foster Phase, we found that immediately after Mr. Foster's death, three White House officials, Bernard Nussbaum, Margaret Williams, and Patsy Thomasson, conducted a late night search of his office. The Committee found that Mr. Nussbaum told one of his assistants, Steven Neuwirth, that the First Lady and Susan Thomases did not want law enforcement officers to have unfettered access to Mr. Foster's office. Now this occurred right after Ms. Williams called Hillary Clinton and Mrs. Clinton calls Ms. Thomases in the early morning hours.

During the Washington Phase, the Committee discovered that high-level officials at the Resolution Trust Corporation attempted to steer the criminal investigations of Madison Guaranty. April Breslaw told an RTC investigator that there are some RTC people in management positions who would take "a dim view" of investigating Madison Guaranty. Ms. Breslaw told RTC investigator Jean Lewis in a taped conversation that head people at the RTC would, "Like to be able to say Whitewater did not cause a loss to Madison."

The Special Committee learned that the White House contacted the Small Business Administration about Judge David Hale and his SBA-funded investment company, Capital Management. We further discovered that at the request of the White House, the SBA sent confidential files relating to Hale to White House Associate Counsel Neil Eggleston. The Department of Justice had to step in and demand the return of those files.

The Committee discovered that the White House even tried to hinder the Senate's own inquiry in the summer of 1994 as to improper contacts between the Treasury Department and the White House.

Now in the coming weeks we will focus upon the Arkansas Phase of our investigation. This phase concerns the activities of then-Governor Clinton, his business partners and associates during the 1980's. We will investigate whether Governor Clinton improperly used the power of his office to reward his friends, partners, and associates. I will briefly lay out the matters that we will examine.

First, the funding of Whitewater; second, the handling of Whitewater after 1986; third, the tax treatment of Whitewater; fourth, David Hale and Capital Management Services; fifth, Dan Lasater; sixth, the Perry County Bank in the 1990 Arkansas Gubernatorial Campaign; and finally, the Rose Law Firm billing records, the records that mysteriously appeared in the personal residence of the White House this past January. How did these important records get from Little Rock to Washington, who left these records in the White House Book Room and why were the subpoenaed records not turned over to investigators for 2 years?

As you can see, these areas that I have just briefly touched on will take a substantial amount of work and time and effort to complete in the next few weeks, but we will fulfill our obligation to the American people to get the full facts and to answer these questions.

Today, we will hear from several witnesses about two matters, the fundraiser held at Madison Guaranty for Bill Clinton and the lucrative contracts that Madison was awarded to lease office space to an Arkansas State agency.

On April 4, 1985, McDougal hosted a fundraiser at the offices of Madison Guaranty. The purpose of the fundraiser was to pay off the remaining campaign debt from the 1984 Gubernatorial Campaign. In the closing days of that race, Bill Clinton took out a loan for \$50,000 from the Bank of Cherry Valley. The Clintons were personally obligated to pay off that loan. We also know that both before and after the fundraiser, Madison received valuable contracts to lease space to the Arkansas Development Finance Authority; and that these contracts helped prop up McDougal's financial house of cards.

Our witnesses today will testify about whether there was a connection between the award of the lease to Governor Clinton and the McDougal fundraiser. We will proceed as we have in the past in a bipartisan manner. We will work hard to get out all the facts as thoroughly, and as completely, and as expeditiously as we can. It is the intent of the Chairman to wrap this up before June 14th, if at all possible, and certainly to complete the report by June 17th.

I want to thank the Ranking Member, Senator Sarbanes, all our Members, and the staff that has worked in a collegial way in very difficult circumstances and in a bipartisan effort to successfully complete this inquiry.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, thank you very much, Mr. Chairman. Since I share your expressed intention to move through the agenda

expeditiously, I'm going to forgo, as it were, responding chapter and verse to some of the supposed findings you set out in your opening statement with respect to the work we've more or less completed thus far. Suffice it to say in my view, no illegality or impropriety was demonstrated, and that is very important. Obviously, that will be set forth in the final report which is due on June 17th, and I expect it is quite apparent there will be differing interpretations at that time. I will forego undertaking that project right now since I think we ought to move ahead with the people that are before us.

I am hopeful we will be able to conduct these hearings over the next 2 months in a fair, thorough, and comprehensive way. That we will be able to address the items that are on the agenda in a responsible manner, and then we will draw our conclusions at the end after we have heard all the testimony.

Thank you.

The CHAIRMAN. Could I ask the panel, please, to stand for the purposes of taking the oath?

[Witnesses sworn.]

The CHAIRMAN. I want to thank the panel for their cooperation.

Let me ask if any of my colleagues have any statements that they would like to make before we start with the panel?

Senator Faircloth.

OPENING COMMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. I do not.

The CHAIRMAN. Do any of the witnesses have any statements that they would like to make?

Mr. MALLARD. I do not.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Good morning.

Ms. Herr, actually all the witnesses, let me focus your attention to the subject matter I am going to be asking you questions about today. This has to do with a number of leases that were entered into between State agencies in Arkansas and properties owned by James McDougal and his real estate company, which was part of his savings and loan, Madison Guaranty, back in the mid-1980's. In particular, we are examining the relationship, if any, between those State agency leases and Mr. McDougal's property, how those leases came to be, and the effect that those leases had on Mr. McDougal's financial well-being, because obviously, from the standpoint of his savings and loan and his financial business, the real estate holdings of Madison Financial were an important part of the total financial picture keeping him afloat. So we want to examine the way in which that asset, his real estate company, was assisted through the obtaining of these leases.

I would like to start with Ms. Herr. Where do you now work?

SWORN TESTIMONY OF HELEN HERR FORMER LEASING ADMINISTRATOR ARKANSAS STATE BUILDING SERVICES

Ms. HERR. I'm employed with the U.S. Army Corps of Engineers.

Mr. CHERTOFF. Back in the mid-1980's you worked for the State of Arkansas?

Ms. HERR. That's right.

Mr. CHERTOFF. What was your job?

Ms. HERR. I was the Leasing Administrator at State Building Services.

Mr. CHERTOFF. I'm going to ask you to move the mike a little closer. You can move it to you rather than move yourself to it.

I would like to focus your attention on the period starting in 1983 and ask whether, at the time you were in charge of State leases, you got involved in helping what was then known as the Arkansas Housing Agency look for new office space in Little Rock.

Ms. HERR. That's right.

Mr. CHERTOFF. And how did you go about doing that in the fall of 1983?

Ms. HERR. Many of the details are left—I don't remember the details because at that time, Senator, we had many State agencies that moved around in the city. I can tell you that the people in my office had solicited the market, as we typically did. Whether or not this particular case we did it through a newspaper advertisement, I don't remember, but we had solicited the market looking for space to house Mr. Epes' agency because the space that they were in presently occupying they had outgrown.

Mr. CHERTOFF. Mr. Epes is the gentleman sitting to your right?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. He was then the head of the Arkansas Housing Agency?

Ms. HERR. He was the Director.

Mr. CHERTOFF. Am I right that at this particular time in the mid-1980's, the real estate market in Little Rock was kind of soft?

Ms. HERR. It was.

Mr. CHERTOFF. And what that means for people who are not involved in real estate is that there were some empty space, there were vacancies and landlords were pretty eager to get tenants to fill those spaces; right?

Ms. HERR. That's right.

Mr. CHERTOFF. Just so we can understand a little bit about the economics of the way it works with real estate, if you are a commercial landlord like Jim McDougal was or like this bank subsidiary was, am I right that the real value of your commercial building lies in the rent you can obtain by leasing it out?

Ms. HERR. Sure.

Mr. CHERTOFF. And if you can find a long-term tenant who is going to take a long-term lease, pay market rates or above market rates, is financially responsible like a government agency, that is a prime tenant for a landlord?

Ms. HERR. Yes, it is.

Mr. CHERTOFF. Would you agree with me, therefore, that in 1983 and 1984 in Little Rock, given the soft market in real estate, it was very desirable for someone who was renovating an office building and had a lot of vacancies to get a State agency to come on in and take a long-term lease?

Ms. HERR. Yes, it was.

Mr. CHERTOFF. I take it you would also agree with me that from the standpoint of the financial picture of Mr. McDougal's real estate business, if you have a leased out or an occupied commercial

building, that increases the value of the asset because you have tenants who are actually paying rent and that's generating income; is that right?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. I guess it was no surprise, then, that in the fall of 1983, there were a number of landlords who were soliciting the possibility of having the housing agency move into their buildings; is that right?

Ms. HERR. That's right.

Mr. CHERTOFF. In fact, am I right that in the fall of 1983, Mr. Epes actually had tentatively suggested a couple of buildings to you as the leasing person that he might be interested in having his agency occupy?

Ms. HERR. As I recall, he had, yes.

Mr. CHERTOFF. And did he, in fact, ask you to start negotiating with a couple of those premises?

Ms. HERR. I remember that because you have put a memo in front of me that says that. I did not remember that until I saw that memo.

Mr. CHERTOFF. But with your memory refreshed, can you tell us a little bit about what he had asked you to do in late 1983?

Ms. HERR. There was a location that he liked on Brookwood Drive, and I don't recall a lot about it, that particular location.

Mr. CHERTOFF. But are you at least clear that as of late 1983, you had already gone through a fair amount of processing of proposals, there were a couple of places that Mr. Epes was interested in that you were beginning to pursue?

Ms. HERR. Yes, yes, sir.

Mr. CHERTOFF. Now did there come a time after you were pretty well along in this process that you learned that Susan McDougal and Jim McDougal were interested in being considered for having this agency lease space in their building, in Madison?

Ms. HERR. Yes, yes, sir.

Mr. CHERTOFF. How did you learn about that?

Ms. HERR. As I recall, Ms. McDougal came to our office and met with Mr. Mallard, and Mr. Mallard asked me to come into his office and I met with him there.

Mr. CHERTOFF. What did Mr. Mallard tell you?

Ms. HERR. That the McDougals were developing a building that he would like for us to look at.

Mr. CHERTOFF. Mr. Mallard was who at that time?

Ms. HERR. Mr. Mallard was the Director of the agency.

Mr. CHERTOFF. Your agency?

Ms. HERR. Yes, sir, my boss.

Mr. CHERTOFF. He was your boss?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. So you were in charge of leasing, and he was your boss in your agency?

Ms. HERR. That's right.

Mr. CHERTOFF. Mr. Mallard called you in to meet with Susan McDougal?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. And told you that the McDougals were interested in being considered to have the lease in their building?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. Now did Mr. Mallard tell you to do anything?

Ms. HERR. He asked that I get the gentleman that worked in our architectural division to go with me to look at the space.

Mr. CHERTOFF. Did you do that?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. Did you go with Mr. Epes?

Ms. HERR. I don't recall who from Mr. Epes' agency went at that particular time. Mr. Brooks in my office and Mr. Anderson in his office were handling a lot of the details at that time.

Mr. CHERTOFF. All right. So Mr. Epes had someone in his office, in the housing agency's office, named Mr. Anderson and you had someone in your office named Mr. Brooks?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. And your understanding is that someone from your agency and someone from the housing agency actually went to look at the premises in Mr. McDougal's building?

Ms. HERR. Yes, sir. And I went also.

Mr. CHERTOFF. After this inspection, what was Mr. Epes'—what was his reaction? Did he want to go ahead and lease space in the building, Mr. McDougal's building, or not?

Ms. HERR. No, he did not.

Mr. CHERTOFF. Did he explain why not?

Ms. HERR. As I recall, the objections were the location of the facility and the fact that they did not believe that there was enough space to efficiently design their offices.

Mr. CHERTOFF. When you say "location," what was there in particular about the location that was a problem for Mr. Epes' agency?

Ms. HERR. The location was in an area of Little Rock on South Main Street that had gone through a number of years of having many vacant buildings and they did not feel that it was a desirable location.

Mr. CHERTOFF. Did they feel it was unsafe?

Ms. HERR. Yes.

Mr. CHERTOFF. You said there were also concerns about space that there was not enough space for the agency or there wouldn't be enough if the agency expanded?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. Now did Mr. Epes actually have a letter sent under his signature rejecting Mr. McDougal's building as a place for his agency to occupy space in?

Ms. HERR. Yes, he did.

Mr. CHERTOFF. I'm going to show you a copy of that letter which we will put up on the screen here. You should have a copy in front of you, dated March 5, 1984. It's addressed to a Ms. Helen Vowell. I take it that's you?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. In a prior name?

Ms. HERR. In another life.

Mr. CHERTOFF. This is Mr. Epes' letter officially on behalf of the housing agency rejecting the space at the Madison building; right?

Ms. HERR. Yes.

Mr. CHERTOFF. Did you go tell your boss, Mr. Mallard, that Mr. Epes did not want to go lease space in Mr. McDougal's building?

Ms. HERR. Yes, as I recall I did.

Mr. CHERTOFF. Did you have a face-to-face conversation with Mr. Mallard about that?

Ms. HERR. Yes.

Mr. CHERTOFF. What did Mr. Mallard tell you?

Ms. HERR. As I recall, we talked a lot about it and Mr. Mallard thought that the location—that Mr. Epes' objections were not valid, that it was a good location and that our architect could design the space to fit them. And he told me that the Governor's office was interested in helping develop that portion of Little Rock. The Governor's Mansion was located near there. It's an area—it's a historical area of Little Rock called the Quapaw Quarter, and he said that they were very interested in leasing the space to help in the revitalization of that portion of Little Rock.

Mr. CHERTOFF. When you say, "they were interested in leasing the space," you mean the Governor's office was interested in having the agency lease the space?

Ms. HERR. Yes.

Mr. CHERTOFF. Other than saying that the Governor's office was interested because it would help the development of that area, did he say anything else in that conversation about why there might be an interest in having that space in Mr. McDougal's building rented?

Ms. HERR. He said that the Clintons and the McDougals were friends and that they were interested in developing that part of Little Rock.

Mr. CHERTOFF. So Mr. Mallard really gave you two reasons. He said to you that there was interest in developing that quarter of Little Rock and that the McDougals were friends of the Clintons?

Ms. HERR. Well, yes, sir.

Mr. CHERTOFF. Did Mr. Mallard tell you that he didn't want to consider any other proposals for Mr. Epes' agency, that in fact he wanted to have this be the proposal that was accepted?

Ms. HERR. I don't recall if he said it exactly like that to me. I just know that he said that he was interested in us pursuing working out an agreeable solution.

Mr. CHERTOFF. By the way, did Mr. Mallard indicate to you or were you aware that Mr. Mallard himself was a friend of the McDougals?

Ms. HERR. Yes.

Mr. CHERTOFF. How were you aware of that?

Ms. HERR. Mr. Mallard told me.

Mr. CHERTOFF. This is obviously an important conversation. I want to see if we can kind of sharpen it a little bit by going back to a question and answer you testified about when you gave a deposition a short while back, I think it was on February 13th, before we broke. It's at page 145 of your deposition, if you can find it.

Ms. HERR. I have it.

Mr. CHERTOFF. There's a question at line 3 from Mr. Fromewick, Counsel on the Democratic side:

Question: So back up if we can to that period of time, yes, you knew that the McDougals and Clintons were friends, and you said you knew that Mallard was friends of the McDougals?

Answer: He was friends and he would talk about seeing them in a social setting. And I don't recall exactly what he said to me when he told me that we were not

going to consider other proposals, only the Madison proposals. But as I recall, he said the Governor's office wants us to lease this space, and that's the way it is going to be.

Question: And you are quite clear about that?

Answer: That's the way I recall it.

That's your testimony; right?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. And that's the way it happened?

Ms. HERR. Yes, sir. I thought—you were questioning me a few minutes ago about early negotiations on the Madison space.

Mr. CHERTOFF. This relates to another conversation you had?

Ms. HERR. As I recall it, this would have been a little bit later on when it became even more apparent that Mr. Epes and his employees did not want to move there.

Mr. CHERTOFF. OK. So then there came a point after this initial objection by Mr. Epes that Mr. Epes continued to resist moving to this Madison building?

Ms. HERR. Yes, he did.

Mr. CHERTOFF. I gather that a lot of the problem was the employees in Mr. Epes' agency didn't want to work in that building?

Ms. HERR. That's right.

Mr. CHERTOFF. I gather some of that was due to safety concerns?

Ms. HERR. Yes, sir.

Mr. CHERTOFF. You went back and had an additional conversation with Mr. Mallard about this?

Ms. HERR. Well, we had many conversations. We saw each other daily and worked with each other very closely.

Mr. CHERTOFF. And this excerpt from your earlier testimony in the deposition where you said that he wasn't going to consider other proposals, "The Governor's office wants us to lease this space and that's the way it's going to be." This comment by Mr. Mallard came as you continued to relay Mr. Epes' objections?

Ms. HERR. Yes.

Mr. CHERTOFF. Mr. Epes, did you ever wind up actually meeting with the Governor about this?

**SWORN TESTIMONY OF S. WOOTEN EPES
FORMER EXECUTIVE DIRECTOR
ARKANSAS HOUSING DEVELOPMENT AGENCY**

Mr. EPES. Yes, sir, I did.

Mr. CHERTOFF. I take it that was after you had sent your letter of March 5, 1984; right?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. Now is that your signature on the letter?

Mr. EPES. No, sir.

Mr. CHERTOFF. It's the signature of your deputy?

Mr. EPES. I am not certain, but I do recall that a letter was authorized to be sent and I believe that Mr. Anderson probably signed my name to it, and I was somewhat familiar with the contents of it. I knew that it went out.

Mr. CHERTOFF. So you authorized the letter to be sent with your signature?

Mr. EPES. Yes, yes, sir.

Mr. CHERTOFF. So it's clear that as of March 5th, the date of this letter, as Ms. Herr testified, you on behalf of your agency did not want to accept the proposal at Madison?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. Did you go to Mr. Mallard to speak to him and renew your objection?

Mr. EPES. I don't believe I did.

Mr. CHERTOFF. You conveyed it through Ms. Herr?

Mr. EPES. It's been many years, so I'm not certain, but probably Mr. Anderson did. He handled many of the day-to-day activities regarding the lease arrangement.

Mr. CHERTOFF. Just for the record, I believe Mr. Anderson has passed away, so that's why we don't have him here.

Mr. EPES. Yes, sir.

Mr. CHERTOFF. Now there comes a point where you, Mr. Epes, Mr. Anderson, or your agency are resisting taking this lease and Mr. Mallard is insisting that you take it and you finally have a meeting with the Governor, Governor Clinton. How did that come about, Mr. Epes?

Mr. EPES. The Chairman of the Board of Directors of the Arkansas Housing Development Agency discussed the matter with me and was very aware that the employees of the agency did not want to be located in that building. And I'm not certain whose suggestion it was, but during the conversation I had with him regarding that, it became clear to us that the only recourse was to go to both of our boss, who was the Governor.

Mr. CHERTOFF. You actually had a meeting with the Governor?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. Who else was at the meeting?

Mr. EPES. The Chairman, Mr. Hardwicke, was there, and the Governor and I believe someone else was in the room, but I do not recall who.

Mr. CHERTOFF. In that meeting did you explain to Governor Clinton that your employees did not want to occupy space in or work in the Madison building?

Mr. EPES. Yes, sir, I did.

Mr. CHERTOFF. And you indicated that Mr. Mallard was insisting you take the lease?

Mr. EPES. I believe that I did that, yes, sir.

Mr. CHERTOFF. At the time you had this conversation with the Governor, was it common to take disputes about leases to the Governor's office?

Mr. EPES. I do not know. I had only been in that job several months.

Mr. CHERTOFF. Other than this occasion you met with the Governor on this lease, do you remember any other instances that a dispute like this was taken up to the Governor, in your experience?

Mr. EPES. My experience was in my job, we moved twice, and the second time, it did not occasion a meeting with the Governor.

Mr. CHERTOFF. On this occasion, did the Governor evidence familiarity with the issue about this lease or did you have to explain it to him?

Mr. EPES. I don't recall.

Mr. CHERTOFF. Did he indicate that he knew Mr. McDougal?

Mr. EPES. I am not certain that Mr. McDougal's name was discussed during the meeting.

Mr. CHERTOFF. Well, was the name of the building discussed in the meeting?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. It's the Madison building?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. I take it that the Quapaw Quarter is near the Governor's Mansion so you would expect that the Governor would be familiar with the building?

Mr. EPES. Yes, sir. The Quapaw Quarter includes the Governor's Mansion and the area where this building is located.

Mr. CHERTOFF. Now after you had told Governor Clinton about the objections your employees had to working in this building, what was his decision about whether your agency would take this lease in the Madison building or not?

Mr. EPES. I am not sure that he actually made a decision. His statement was that he did not see the necessity to overrule the decision of Mr. Mallard and that he felt that that part of downtown Little Rock needed redevelopment and that it would be a good thing for the State to be located in that part of town to assist in that redevelopment. It was about four blocks from the Governor's Mansion.

Mr. CHERTOFF. So Mr. Clinton essentially sided with Mr. Mallard's decision or he accepted Mr. Mallard's decision that you should go ahead and take the lease; right?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. And you signed the lease on about April 1, 1984; is that fair to say?

Mr. EPES. Yes, sir. That's what the lease shows here.

Mr. CHERTOFF. Would it surprise you to learn that it was a 5-year lease and that the total amount of payments over the 5 years was a little bit under \$300,000? You can take a look at the document if you want to.

Mr. EPES. Well, it was \$4,800 a month, whatever that is times 60, yes, sir.

Mr. CHERTOFF. Now, Ms. Herr, it's interesting, we heard the rationale for this lease was—at least part of the rationale was to revitalize this Quapaw Quarter of Little Rock. Other than this lease, in the Madison building which I gather was a year later in April 1985, was expanded, is that correct, Mr. Epes, that your agency took additional space in the Madison building in 1985?

Mr. EPES. We did.

Mr. CHERTOFF. I believe the lease was signed in August.

Mr. EPES. I was going to say, my recollection was it was later because the Arkansas Housing Development Agency was abolished in 1985 and the new agency, the Arkansas Development Finance Authority, was the successor agency and it was an expanded authority which required additional staff, and therefore, when we began staffing up for the new agency, we needed more space.

Mr. CHERTOFF. So you leased additional space in Mr. McDougal's building?

Mr. EPES. Right.

Mr. CHERTOFF. Ms. Herr, other than that lease and then the expanded lease, were there any other leases that you were aware of during this period from 1983 to 1985 down in this Quapaw Quarter which was, we've been told, the point of redevelopment?

Ms. HERR. At some point, and I see here it was November, the State Revenue Department leased a facility across the street from the bank.

Mr. CHERTOFF. Who owned that facility?

Ms. HERR. Mr. McDougal.

Mr. CHERTOFF. So that was another State lease that went into a property owned by Mr. McDougal?

Ms. HERR. Yes.

Mr. CHERTOFF. Other than the leases that were obtained in Mr. McDougal's properties during your period of tenure between 1983 and let's say 1985 or 1986, were any other State agencies located in any non-McDougal buildings in that area already?

Ms. HERR. Not that I recall.

Mr. CHERTOFF. Ms. Hays, I would like to turn to you for a minute in the last few minutes we have. You actually went to work at Madison Guaranty Savings & Loan in June 1985?

**SWORN TESTIMONY OF PATRICIA J. HAYS
FORMER ADMINISTRATIVE ASSISTANT & COLLECTIONS
OFFICER, MADISON GUARANTY SAVINGS & LOAN**

Ms. HAYS. That's right.

Mr. CHERTOFF. You were not involved in negotiating any of these leases, were you?

Ms. HAYS. No.

Mr. CHERTOFF. Were you aware in 1985 that there was discussion about expanding the Arkansas Housing Agency's lease in the Madison building?

Ms. HAYS. I was aware of it. But I don't remember exactly when that was.

Mr. CHERTOFF. In fact, you were taken through some of the additional space?

Ms. HAYS. Right.

Mr. CHERTOFF. Other than the bank offices and the State agency, were there any other tenants in Mr. McDougal's building on Main Street?

Ms. HAYS. Yes.

Mr. CHERTOFF. Which were the other tenants?

Ms. HAYS. Quapaw Title Company.

Mr. CHERTOFF. What was that? What kind of business was that?

Ms. HAYS. A title company.

Mr. CHERTOFF. Who owned that, do you know?

Ms. HAYS. Andy Clark.

Mr. CHERTOFF. Other than that, any other tenants?

Ms. HAYS. Not that I remember.

Mr. CHERTOFF. Now, you were not involved in 1985 in the leasing decision; right?

Ms. HAYS. That's right.

Mr. CHERTOFF. Were you aware in 1985 in April that there had been a fundraiser that Mr. McDougal held for Governor Clinton to retire a campaign debt from the previous year's election?

Ms. HAYS. No.

Mr. CHERTOFF. Did there come a time in 1987 that you did become aware that there had been a fundraiser to retire a campaign debt that was held by Mr. McDougal?

Ms. HAYS. No, sir. I think the first time I learned about that was when I read it in the paper recently.

Mr. CHERTOFF. Did there come a time in 1987 that you became aware that there was an issue concerning leases, State leases on Mr. McDougal's property?

Ms. HAYS. I don't believe so.

Mr. CHERTOFF. Well, let me ask you this. Do you remember an individual by the name of Charles Peacock?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. Who was Charles Peacock?

Ms. HAYS. He was a Madison borrower and he may have been a shareholder as well. I'm not certain.

Mr. CHERTOFF. Was there a timeframe that he was actually a Director of Madison Guaranty Savings & Loan?

Ms. HAYS. Possibly. But I don't remember exactly what his position was.

Mr. CHERTOFF. And you also knew him to be a borrower, a substantial borrower?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. Was he borrowed money for a business called Dixie Continental Leasing?

Ms. HAYS. That's right.

Mr. CHERTOFF. Am I right that there came a point in 1987 that there was a legal dispute about Mr. Peacock's failure to repay his loan to Madison Guaranty?

Ms. HAYS. The loan was sent for foreclosure.

Mr. CHERTOFF. And you were involved in handling the matter for the bank; right?

Ms. HAYS. Right.

Mr. CHERTOFF. Mr. Peacock was represented by a lawyer named Mr. Hopkins?

Ms. HAYS. Right.

Mr. CHERTOFF. You had a lawyer also who you were working with on your side; right?

Ms. HAYS. That's right. Lance Miller.

Mr. CHERTOFF. Did there come a time that you had a conversation in 1987 with Mr. Peacock's lawyer about a fundraiser and about State leases?

Ms. HAYS. Yes.

Mr. CHERTOFF. Would you tell us how you came to have that conversation?

Ms. HAYS. Sure. Let me back up because I said Lance Miller was our lawyer. Actually I think it was Marcella Taylor, that was our lawyer, but Lance worked at the same firm with her.

I remember one afternoon that Greg Hopkins came into my office, he was very angry, and this was after the Dixie Continental loan had been referred for foreclosure, and he made several statements to me that day.

Mr. CHERTOFF. What did he say to you concerning the loan and its relationship to campaign contributions and that relationship to leases, State leases of Mr. McDougal's properties?

Ms. HAYS. The best I can recall is he said that proceeds from the Dixie Continental Leasing loan had gone to Governor Clinton's campaign, that Mr. McDougal had arranged through Governor Clinton for various State agencies to lease space from Madison, and I think that's about it.

Mr. CHERTOFF. Did you actually report this conversation to the lawyer that you were working with, Mr. Miller?

Ms. HAYS. Yes, I did.

Mr. CHERTOFF. And you reported it the same day?

Ms. HAYS. Yes.

Mr. CHERTOFF. Because you were pretty upset about this conversation?

Ms. HAYS. I don't know that I was upset. I found it interesting.

Mr. CHERTOFF. We have a memo that Mr. Miller wrote about this conversation that you had reported to him which I would like to direct your attention to. It's to JSS from LM, dated April 23, 1987. I would like you to find that because I'm going to—

Ms. HAYS. Yes, I have it.

Mr. CHERTOFF. It's a fairly long memo. I would like, though, to direct your attention to the, I guess what's page 3 of that memo. There's a paragraph that begins "in addition."

Ms. HAYS. Yes.

Mr. CHERTOFF. I will read it to you, and then I want to ask you whether this is a correct rendition of what you told Mr. Miller and what you had been told by Mr. Hopkins. "In addition, Mr. Hopkins informed Ms. Heritage"—and I take it at that time you went by the name of Ms. Heritage.

Ms. HAYS. Right.

Mr. CHERTOFF. —"that one of the loans made by Madison to Dixie Continental Leasing, upon which Marcy Taylor has undertaken foreclosure proceedings, also involves fraudulent transactions. Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock." Now is that, in fact, what you told Mr. Miller?

Ms. HAYS. To the best of my memory, it is. I do not have any reason to doubt that Mr. Miller accurately wrote down what I told him.

Mr. CHERTOFF. What you told Mr. Miller was what you had been told by Mr. Hopkins?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. Now the fundraiser occurred on April 4, 1985. And I would like to direct your attention, Mr. Epes, to a letter which we have in the file on your letterhead dated April 9, 1985, to Paul Mallard signed with your name. I would like you to find that if you can.

Mr. EPES. I don't believe I can. I have two letters here, but neither of them are that letter.

Mr. CHERTOFF. We'll see if we can get you a copy real quick. The yellow light is on. We're just getting you the letter and my time is going to be up in a minute. Just a couple of questions.

Take a look at this letter, Mr. Epes. Am I correct that you signed this letter on April 9, 1985, which is 5 days after this fundraiser, indicating that because of the change in your agency, there was going to be a need to have expanded space?

Mr. EPES. I signed this letter on April 9th. I had no knowledge that it was—how many days it might have been after whatever fundraiser.

Mr. CHERTOFF. That's fair, but you did sign this letter and ultimately this led to your getting expanded space in Mr. McDougal's building?

Mr. EPES. Yes, sir.

Mr. CHERTOFF. Now in fairness to you, Mr. Epes, that's a good point. You did not know about any fundraiser; is that right?

Mr. EPES. That's correct.

Mr. CHERTOFF. Did you know at any time in 1984 or 1985 that Mr. Clinton and Mr. McDougal were business partners in an operation known as Whitewater Development Corporation?

Mr. EPES. I don't recall when I learned of that relationship. I knew that they were friends. That's about all I knew.

Mr. CHERTOFF. And you did not know there was a business relationship?

Mr. EPES. I don't believe that I did. I cannot tell you when I learned that.

Mr. CHERTOFF. Did you know that James McDougal had put a substantial amount of money into that joint venture during 1984 and 1985?

Mr. EPES. No, sir, I knew nothing of that.

Mr. CHERTOFF. I think this is a good time to stop.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Good morning, panel.

Let me start with this historical information about the early 1980's and the real estate market in Little Rock. We have gone through this exercise with the sewer and water authority, so now we're going to deal with this history in terms of real estate. The market, you say, was soft in that time, and we'll accept that. We were talking about lower priced commercial real estate; is that correct, Mr. Mallard, in this case?

SWORN TESTIMONY OF PAUL MALLARD FORMER DIRECTOR ARKANSAS STATE BUILDING SERVICES

Mr. MALLARD. Yes.

Mr. BEN-VENISTE. And is it not the case that there was no issue about whether the housing authority needed to move? We're not dealing with a situation where there's any suggestion that for political reasons, an agency was moved out of its headquarters into another headquarters, are we?

Mr. MALLARD. I think they were being forced to move for lack of space. They needed more space.

Mr. BEN-VENISTE. There is no question about that in your mind, is there, Ms. Herr?

Ms. HERR. No, there isn't.

Mr. BEN-VENISTE. Mr. Epes, you would agree that your agency really was required to move by the circumstances it found itself in at that point?

Mr. EPES. Yes, sir. We needed relocation.

Mr. BEN-VENISTE. It is also the case, is it not, that there were some dozen or 18 different proposals that came across your desk, Ms. Herr, about the opportunity to provide space for this agency; is that correct?

Ms. HERR. There were several.

Mr. BEN-VENISTE. And we've been all through that in deposition practice here and we could go through the various competing bids that came in and the spaces that were looked at from I guess some point in mid-1983 to early 1984; is that right?

Ms. HERR. Yes.

Mr. BEN-VENISTE. None of those spaces with one exception was even potentially interesting to the housing authority; correct?

Ms. HERR. As I recall, yes, that's correct.

Mr. BEN-VENISTE. Mr. Mallard, did you find it unusual that a determination was being made that the State use its licensing authority and its ability to move State agencies into real estate to promote a policy that revitalize a historic area of Little Rock?

Mr. MALLARD. That was State Building Services' policy and had been for a number of years.

Mr. BEN-VENISTE. This was an area, as we've heard, the Madison Bank building, which was in close proximity to the Governor's Mansion, in the same quarter of town; is that correct?

Mr. MALLARD. That's correct.

Mr. BEN-VENISTE. That area, like many urban areas in America, had suffered during the 1970's and early 1980's in terms of a downturn in commercial real estate; is that correct?

Mr. MALLARD. That's correct.

Mr. BEN-VENISTE. It was the policy of the State, as you articulated it, to try to improve that area which was populated, I trust, by lower-income residents of Little Rock, to try to bring that up in character and in safety and in commercial desirability; correct?

Mr. MALLARD. That's correct.

Mr. BEN-VENISTE. Now, you say that that had long been the policy of the State of Arkansas; is that correct?

Mr. MALLARD. That was the policy when I arrived at State Building Services.

Mr. BEN-VENISTE. What year was that, sir?

Mr. MALLARD. 1983.

Mr. BEN-VENISTE. Ms. Herr, you would not take issue with the notion that from time to time when State agencies are asked to move their headquarters, that there are individuals in those agencies who would prefer not to go to the place they are told to go to?

Ms. HERR. That's very true.

Mr. BEN-VENISTE. That happens or happened historically, because we're dealing with a decade or more ago, I guess, 13 years ago, that happened even prior to 1983; is that not so?

Ms. HERR. Yes, it did.

Mr. BEN-VENISTE. I take it it's happened since, that agencies of the State who are relocated have employees who would prefer not to go to the place that the State tells them to go?

Ms. HERR. That's right.

Mr. BEN-VENISTE. Surprisingly, that even happens in Washington. We have those examples on a fairly frequent basis. People just find it traumatic to move and then if they move to a place that is unknown to them or they are uncertain about, they get even more nervous about that.

Ms. HERR. That's correct.

Mr. BEN-VENISTE. And you would not take issue with the notion that that's precisely what happened back in 1983 in Little Rock, Arkansas in this situation?

Ms. HERR. That's right.

Mr. BEN-VENISTE. Now the principal concern, it would seem, as I hear your testimony was one about safety. Somehow it was considered that the Main Street location of the Madison Bank, although it was in close proximity to the Governor's Mansion, was not in the safest part of town; correct?

Ms. HERR. That's right.

Mr. BEN-VENISTE. Mr. Mallard, you understood that that was an expressed concern?

Mr. MALLARD. Right.

Mr. BEN-VENISTE. As part of a revitalization of any rundown area, it would not be unusual that that would be a concern; is that correct?

Mr. MALLARD. That's correct.

Mr. BEN-VENISTE. Let's go back in time, if you can recall, back after the agency moved to the Madison location, whether there in fact were any incidents of assault on any of the employees of that agency, of the housing agency. Do you recall any being reported?

Mr. MALLARD. I don't recall any assaults on any individuals. I think that there was a car broken into one time on the parking lot, but that's—

Mr. BEN-VENISTE. A car broken into in a parking lot?

Mr. MALLARD. I think so.

Mr. BEN-VENISTE. I am shocked. That's pretty much like saying hello to somebody in some of our areas here in Washington or in New York or other places I am familiar with. Let's talk about serious crime. Were there any robberies or assaults or rapes or other kinds of violent offenses during the entire period of time that the agency was located in the Madison headquarters?

Mr. MALLARD. Not that I was aware of.

Mr. BEN-VENISTE. Ms. Herr?

Ms. HERR. Not that I was aware of.

Mr. BEN-VENISTE. So this concern about safety as it turned out was not well-founded, thankfully, in terms of the actual experience of the agency in that quarter; is that correct, Mr. Epes?

Mr. EPES. Yes, sir, that is correct.

Mr. BEN-VENISTE. Does anyone on the panel disagree with that characterization?

Mr. Epes, you were encouraged by your deputy to send a letter saying, "hell no, we won't go," in effect, a meeting was had at the Governor's office which you attended, and the notion of revitaliza-

tion and I take it overreaction to the concerns about the neighborhood were put on the table and a determination was made that the Governor's office would not overrule Mr. Mallard's decision to relocate the offices to the Madison headquarters; is that correct?

Mr. EPES. Yes, sir.

Mr. BEN-VENISTE. And from the standpoint of space availability, contiguousness of space and price, Mr. Mallard, was it your view that the Madison building provided competitive or better proposal to the State?

Mr. MALLARD. Yes, yes.

Mr. BEN-VENISTE. In terms of the policy that you have expressed, in terms of attempting to revitalize the area, that policy trumped the other concerns, did it not?

Mr. MALLARD. I think so, yes.

Mr. BEN-VENISTE. Was there any pressure put on you, Mr. Mallard—and this is an important question from a historical perspective—in terms of the decision to select the Madison location?

Mr. MALLARD. No, not particular pressure from any individual, other than the individual wanted the lease.

Mr. BEN-VENISTE. That would be true of any individual, and I'm sure that in Little Rock, the process was then and probably is now a little more informal than that which we would be familiar with in Washington in dealing with the State leasing, where you would meet with the individuals, they would make a pitch and a proposal, you would go out and visit, have a cup of coffee, talk about what they had to offer and then come back and make up your mind. Is that a fair way of describing it?

Mr. MALLARD. Basically, yes.

Mr. BEN-VENISTE. Ms. Herr?

Ms. HERR. We had that leeway, yes, sir.

Mr. BEN-VENISTE. There wasn't anything improper about that, about meeting with the individuals?

Ms. HERR. No, sir, no.

Mr. BEN-VENISTE. So the concerns that were raised about the location turned out to be, fortunately for all, involved an exaggeration? Mr. Epes, you would agree with that?

Mr. EPES. Yes, sir.

Mr. BEN-VENISTE. Then there came a time later when you required more space and you requested the authority to negotiate for additional space, did you?

Mr. EPES. Yes, sir, sure did.

Mr. BEN-VENISTE. And were you able to find contiguous space in Madison?

Mr. EPES. Yes, sir, there was adjoining space, we just had to knock out a portion of a wall and make a doorway to accommodate the additional new employees, yes, sir.

Mr. BEN-VENISTE. Mr. Mallard, did you find that that was a reasonable and acceptable way to address the additional space requirements of the agency?

Mr. MALLARD. Yes.

Mr. BEN-VENISTE. To lease additional space from Madison?

Mr. MALLARD. Yes. We always tried to keep them in the same location if we could.

Mr. BEN-VENISTE. Did you feel that in some way, you were being held up or extorted by Madison in terms of the lease terms that were proposed or were they in line with the economics of your prior experience?

Mr. MALLARD. I think so.

Mr. BEN-VENISTE. There was a renovation made to suit the quarters, wasn't there?

Mr. MALLARD. Yes.

Mr. BEN-VENISTE. And that was folded into the lease price?

Mr. MALLARD. I think it was, yes.

Mr. BEN-VENISTE. Ms. Herr, do you recall?

Ms. HERR. Yes, it was. Yes.

Mr. BEN-VENISTE. That was acceptable?

Ms. HERR. Yes, it was.

Mr. BEN-VENISTE. Mr. Epes, you were satisfied?

Mr. EPES. Yes, sir, definitely.

Mr. BEN-VENISTE. Then there came a time when you expanded beyond the limitations of the Madison building and you were able to negotiate new space, I take it?

Mr. EPES. Yes, sir, we moved.

Mr. BEN-VENISTE. What year was that?

Mr. EPES. I'm not certain. I believe it was in 1987, perhaps early 1987, that the new authority had continued to grow and we needed more room for personnel and storage and meeting rooms and so we moved to 100 Main Street.

Mr. BEN-VENISTE. OK. And you were obliged, then, to break your lease, because you had a 5-year lease with Madison; correct?

Mr. EPES. Yes, sir.

Mr. BEN-VENISTE. Under the circumstances, the new landlord negotiated with Madison and negotiated a settlement of the additional time left on the lease?

Mr. EPES. That's my recollection. I was not involved in those negotiations, but I seem to recall something of that nature.

Mr. BEN-VENISTE. Ms. Herr, were you involved in those?

Ms. HERR. No, sir.

Mr. BEN-VENISTE. Mr. Mallard?

Mr. MALLARD. I don't think I was, no.

Mr. BEN-VENISTE. Our understanding is that such negotiations took place, this was after Mr. McDougal had left the savings and loan. It was after the savings and loan had been taken over, is that right, Ms. Hays, in 1987?

Ms. HAYS. I'm sorry, could you repeat the question?

Mr. BEN-VENISTE. 1987 was after the savings and loan had been taken over?

Ms. HAYS. It was after the McDougals were ousted. I do not think it was technically taken over by the RTC until 1989.

Mr. BEN-VENISTE. So in any event, the McDougals had nothing to profit from or were not involved in the negotiations in 1987; is that your recollection, Mr. Epes?

Mr. EPES. I'm sorry, I can't recall at what stage that took place.

Mr. BEN-VENISTE. Ms. Herr, you indicated there was another property that was leased by the State, that was the Revenue Department which opened an office across the street from Madison in

a building that had been renovated also by Mr. McDougal and Madison; correct?

Ms. HERR. That's right.

Mr. BEN-VENISTE. And you were asked whether there were other State agencies that were moved to the Quapaw Quarter, and you indicated the revenue building was the only additional one. However, let me ask you this. When there is a revitalization, the idea is to bring a new and stable enterprise, to wit, like a government facility, into the area which becomes a magnet for supporting infrastructure around the area. Did you say whether as a result of Madison—of the agency moving to Madison, that the resulting area began to improve?

Ms. HERR. Yes, it did.

Mr. BEN-VENISTE. Mr. Mallard, would that be your view as well?

Mr. MALLARD. Very much so.

Mr. BEN-VENISTE. So that in that sense, although no other State agencies moved into that area, the desirability of locating a State agency there for the purpose of revitalizing that part of historic Little Rock, was in fact a successful theory that was proved correct in the practical application?

Mr. MALLARD. I would say so.

Ms. HERR. Yes.

Mr. BEN-VENISTE. I think it is important, Mr. Chairman, that we supplement Mr. Mallard's testimony here. Obviously, we can't have all of the witnesses who would provide testimony on each issue on every panel. In this regard, Mr. Nash has given prior testimony regarding the subject matter of whether there was any influence exerted in connection with the selection of the Madison property. And we will hear from Mr. Nash, as I understand it, at some later time in these new hearings.

The CHAIRMAN. I believe next week.

Mr. BEN-VENISTE. But I would like to read at this point to put into context Mr. Nash's testimony from February 21, 1996, page 39:

Question: Mr. Nash, did you exert any influence whatsoever on the SBS—

That would be your agency, Mr. Mallard and Ms. Herr.

—to induce them to select the Madison building for the ADFA offices?

Answer: No. I don't recall exerting any influence or pressure. Did you say "pressure"?

Question: "Influence" is the word I used.

Answer: Influence, no. I may have communicated at that time my interest, but I don't remember that specifically.

Question: You didn't suggest the Madison Guaranty building to SBS, did you?

Answer: No, I did not suggest the Madison Guaranty building to State Building Services.

Now to go beyond that, in the conversation that you were referring to in your testimony in deposition that Mr. Chertoff reminded you about, that was brought out by Mr. Fromewick on the Minority staff, what you were talking about there was the situation after the selection process had identified the Madison Bank, there had been the letter drafted by Mr. Anderson and authorized by Mr. Epes to discuss the selection of the Madison property, and then the Governor decided not to intervene in favor of overruling the decision that Mr. Mallard had made, is that correct, in terms of the timing of the quotation that was read to you? Is that right, Ms. Herr?

Ms. HERR. As I recall it, yes.

Mr. BEN-VENISTE. At that point, the decision was, and as it was communicated back to you, that the Governor was not going to interfere with the decision that was made and was going to let it stand, or the Governor's office?

Ms. HERR. I don't know that that was communicated—that specifically was communicated back to me.

Mr. BEN-VENISTE. OK. But in fact, that's indeed what happened; is that correct, Mr. Epes?

Mr. EPES. I believe so, yes, sir.

Mr. BEN-VENISTE. Now let me go to you, Ms. Hays. It's not your fault but I have a question as to why you were on this panel rather than the panel that we are going to see a little bit later, because all of your testimony has to do with the same subject matter that Mr. Peacock and the other members of that panel will provide to us. That would be Mr. Hopkins and Mr. Miller, about whose conversations you have been asked; is that correct?

Ms. HAYS. That's right.

Mr. BEN-VENISTE. The Majority makes these determinations, and you are in no way responsible for what panel you come onto, so let me ask you a few questions because we're jumping around a little bit in time. Everything that you have testified about occurred in 1987?

Ms. HAYS. That's correct.

Mr. BEN-VENISTE. Everything that the other members of this panel have testified about occurred in 1983 or 1984?

Ms. HERR. Right.

Mr. BEN-VENISTE. This memo that you have been asked about, this memo was leaked or provided otherwise to the press at least in July 1995. Do you recall receiving any questions from the press about it at that time?

Ms. HAYS. Yes.

Mr. BEN-VENISTE. I have an article, and maybe we could make this a part of the record at some point, Mr. Chairman, that is dated July 31, 1995, and I'm going to refer to it if I might.

The CHAIRMAN. Go ahead. It will be ordered in the record.

Mr. BEN-VENISTE. Thank you.

We also have a photograph of someone from the House Banking Committee carrying a stack of documents which was released to the press. Whether this was released at that moment or earlier, I couldn't say, but in any event, you recall being asked about this as early as 9 months ago?

Ms. HAYS. Yes, sir.

Mr. BEN-VENISTE. Mr. Mallard, you were also questioned by the press about these memos that Mr. Chertoff brought up with Ms. Hays 9 months ago; is that correct? I see you were quoted in this article and stated consistently with what you have testified here. It says, "Paul Mallard, who ran the building services office, said 'Clinton never tried to influence me.'" And Mr. Epes, you were also quoted in this article, so I take it when these memos were leaked to the press, you also got a call about it?

Mr. EPES. That's correct.

Mr. BEN-VENISTE. So these memos are at least familiar to the press, if they are not to other people or people who have read those articles back 9 months ago. With respect to everything that you

have testified about here today, Ms. Hays, you had no direct knowledge of it?

Ms. HAYS. Of what's in the memo?

Mr. BEN-VENISTE. The content of the memos.

Ms. HAYS. No, I didn't even know there was a memo until July of 1995.

Mr. BEN-VENISTE. At that time you learned about it because people started calling you on the telephone from the press, I take it?

Ms. HAYS. I think that I actually learned about it from Kenneth Starr's office a few weeks before the press called me. They asked me some questions about it and that was the first time I knew of its existence.

Mr. BEN-VENISTE. Mr. Starr's office questioned you about it and then within a couple of weeks, you received some press inquiries?

Ms. HAYS. Right, I didn't ever see the memo until the reporter showed it to me.

Mr. BEN-VENISTE. I see.

Senator SARBANES. A reporter showed you the memo?

Ms. HAYS. Yes, sir, he brought it to my house.

Mr. BEN-VENISTE. In Little Rock?

Ms. HAYS. Yes, sir.

Mr. BEN-VENISTE. Was it a local reporter for the Little Rock—

Ms. HAYS. I'm sorry, from the Associated Press.

Mr. BEN-VENISTE. Associated Press?

Ms. HAYS. Yes, Bill Simmons.

Mr. BEN-VENISTE. In the memo itself, there are statements attributed to Mr. Hopkins—and we'll hear from Mr. Hopkins, I presume, shortly—but you have no way of knowing whether Mr. Hopkins was exaggerating or telling the truth?

Ms. HAYS. No.

Mr. BEN-VENISTE. He wasn't under oath.

Ms. HAYS. No.

Mr. BEN-VENISTE. He was reportedly quite upset at the time?

Ms. HAYS. That's as I remember it, yes.

Mr. BEN-VENISTE. Please pull your mike a little bit closer. Thank you. So when this happened, it was on the heels, as I understand it, of Mr. Hopkins' suit being thrown out. It was a Chapter 11 proceeding on behalf of his client, Mr. Peacock; is that correct?

Ms. HAYS. That's right.

Mr. BEN-VENISTE. And that had been thrown out of court?

Ms. HAYS. Right.

Mr. BEN-VENISTE. With prejudice, meaning it couldn't be refiled as a Chapter 11?

Ms. HAYS. Right.

Mr. BEN-VENISTE. That has some serious consequences for one who is seeking the protection of bankruptcy court; correct?

Ms. HAYS. Sure.

Mr. BEN-VENISTE. He was upset and he made some statements. Who did you hear those statements from?

Ms. HAYS. What statements are those?

Mr. BEN-VENISTE. Attributed to Mr. Hopkins.

Ms. HAYS. The statements that are in the memo are what Mr. Hopkins told me, and then I told Lance Miller.

Mr. BEN-VENISTE. Then Mr. Miller wrote the memo?

Ms. HAYS. Right.

Mr. BEN-VENISTE. So this conversation that you had with Mr. Hopkins occurred about how long after Mr. Peacock's claim was dismissed with prejudice?

Ms. HAYS. I don't know an exact date, but I think within a week or two.

Mr. BEN-VENISTE. To what did you attribute Mr. Hopkins making this statement to you?

Ms. HAYS. Some legal posturing, as a lawyer, that he was a little bit angry about how things had worked out and he was maybe trying to intimidate me a little bit.

Mr. BEN-VENISTE. And from your perspective in—

Senator SARBANES. I'm sorry, I missed that. Did you say that you thought he was trying to intimidate you a little bit?

Ms. HAYS. Yes, sir.

Mr. BEN-VENISTE. At that point, what was your function vis-à-vis Mr. Hopkins and his client?

Ms. HAYS. I was the collection officer for Madison. I had referred the loan for foreclosure and I worked with the attorneys that were foreclosing the loan, the Dixie Continental Leasing loan.

Mr. BEN-VENISTE. When you say that from your perspective—and we'll hear from Mr. Hopkins so that he can set forth what his position was at the time—but the result of the bankruptcy, Chapter 11 bankruptcy petition being dismissed with prejudice meant that you were back in business as a collections person?

Ms. HAYS. Right.

Mr. BEN-VENISTE. Trying to collect without Mr. Peacock now being able to utilize the protection of the bankruptcy court?

Ms. HAYS. Right.

Mr. BEN-VENISTE. So as you perceived it, Mr. Hopkins was posturing in trying to intimidate you in some respect, that was in connection with your collection function; correct?

Ms. HAYS. Right, right. And at the time I was not a lawyer, but I am now, and so I sort of recognize probably better now what he was doing than I did at the time.

Mr. BEN-VENISTE. What is your perception of what that was?

Ms. HAYS. Just bluffing, I call it, go in and try to make some statements and get the other side a little unsure of what their position is.

Mr. BEN-VENISTE. To get you to cut him a little slack?

Ms. HAYS. Right.

Mr. BEN-VENISTE. Mr. Chairman, I have nothing further at this point.

The CHAIRMAN. Before I turn to other Members, I think it is important to note that the memo in question, which I have just seen for the first time dated April 23, 1987 re: *Madison v. Peacock*, I have been informed was released publicly by the House Banking Committee in July 1995, so I don't think we want to create an inference that somehow some surreptitious leaking of this information took place. But that's what I have been informed, that it was the House Banking Committee and they released a number of documents and that this was one of the documents.

Mr. BEN-VENISTE. My understanding, Mr. Chairman, from Ms. Hays' testimony was that she was questioned about it by a reporter prior to the time of this release.

Ms. HAYS. He said he got it from the House Banking Committee. He had some other documents too.

The CHAIRMAN. That would comport with what we have been told, which was that the House Banking Committee released these documents.

Mr. BEN-VENISTE. Whether this was the official release or this was a leak is another question, Mr. Chairman.

The CHAIRMAN. But again, I think it's important that we note that the documents, whether they were released publicly the day that the reporter came or before or not, came from the House Banking Committee and it was not this Committee.

Mr. BEN-VENISTE. It was not from us.

The CHAIRMAN. Yes, was not this Committee. I think that's fair.

Mr. BEN-VENISTE. I think we're willing to concede that.

Senator SARBANES. I think for the fullness of the record, the House hearing in which they made an official public release, the first hearing was on August 7th, but this document was out there in July. Now, the Chairman is correct to point out that this Committee had nothing to do with this, but it does lay out some of the pattern of activity of the House Committee. As I understand it, the public release of this document which put it out in the public domain took place on August 7th; in fact, it was reported in The Washington Post on August 8th, including a picture showing, "a staff member carries documents that were distributed to members of the media," the caption says, but this document was out there in July, and that's when Ms. Hays, I gather, was approached—the story was in July, I take it?

Ms. HAYS. Yes, I think it was maybe a week or so before the story came out.

Senator SARBANES. Thank you.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. I have just a couple of thoughts to pursue, and then I will turn it back over to Mr. Chertoff.

The CHAIRMAN. Certainly.

Senator MACK. I want to engage in a discussion with Ms. Hays on the issue about what Mr. Hopkins said. I think the important thing here, frankly, is not whether some documents were released before someone else may have known about it or frankly what you think his motivations to be. My concern is what he said, because I think it's pretty central, at least this discussion I think is pretty central to the issues we are pursuing. So again, if you would tell me what Greg Hopkins said to you, I believe he was the attorney for Mr. Peacock?

Ms. HAYS. That's right.

Senator MACK. Mr. Peacock was the head of and had a fairly substantial interest in Madison Financial? He was a borrower of \$50,000 from Madison, and I guess you were engaged in some activities to foreclose on that property?

Ms. HAYS. On the Dixie Continental Leasing loan.

Senator MACK. Right. So Mr. Hopkins comes in and says what to you?

Ms. HAYS. I don't know if I can remember everything, but basically—and I'll have to refer to the memo probably to refresh my memory.

Senator MACK. Sure, that's fine.

Ms. HAYS. That Mr. McDougal had promised to take care of Mr. Peacock and that obviously wasn't going to happen because Mr. McDougal was gone. And since we were foreclosing the loan, he didn't feel like he was being taken care of, that things had happened with the past administration of Madison, that people were going to end up going to prison someday over it, that money from the Dixie Continental Leasing loan had gone to Governor Clinton's Gubernatorial Campaign, and that the Governor had been instrumental in getting the State to lease office space from Madison. And then he made some comments about the Mitchell firm representing Madison, the conflict that he felt that presented.

Senator MACK. So in essence, he was saying that since Mr. Peacock had borrowed this money, a part of which went to the Clinton's Gubernatorial Campaign, that the Governor would make arrangements to see that McDougal's property was leased by a State agency, and don't you understand that this is what we were up to and you can't come back and foreclose? I mean, everybody knew that, certainly you didn't know it but the principals that were involved did. But again I really shouldn't put words into your mouth. I want to make sure I understand what this attorney for Mr. Peacock was trying to tell you.

Ms. HAYS. That seems to be what he was saying, but I don't have any way to know whether any of that was true, what the proceeds of the loan were used for and whether Governor Clinton had any knowledge about anything, if it did in fact happen.

Senator MACK. You made the comment a minute ago when Mr. Chertoff said something like "and you were angry about it," and you said "well, I wasn't angry, it was an interesting comment." Could you tell me, why do you find it interesting and not angering?

Ms. HAYS. I am not exactly sure what it was he asked me about. Greg was very angry when he came in my office. There were a lot of—

Senator MACK. I think he was implying that you were upset about what you heard.

Ms. HAYS. I wasn't really upset about it. A lot of interesting things went on at Madison, and to me this was just another, you know, drop in the bucket. There were all kinds of things going on there, and so I don't know whether any of what Greg told me was true or not, but I felt like there was a possibility that some of it could be true.

Senator MACK. OK.

Mr. Chertoff.

The CHAIRMAN. Let me first go to Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much, Mr. Chairman. I appreciate your recognizing me and I will be very brief because I know that Counsel wants to proceed.

This will be for Mr. Epes. Before you leased the Madison building, there has been a reference to a letter—and I apologize for coming in late, but I had an energy hearing that I had to conduct—that letter was dated October 11, 1983, and indicated an interest to rent the building at Brookwood Street in Little Rock.

Mr. EPES. Yes, sir.

Senator MURKOWSKI. Did you feel, as I am told by staff, that the building did or did not meet the needs of your agency, the Alaska—the Arkansas Housing Development?

Mr. EPES. Occasionally we get my old address, AK, Alaska and AR, Arkansas mixed up.

Senator MURKOWSKI. Yes. Go ahead.

Mr. EPES. As I recall, the reason—by the way, the Brookwood site was raw land at that point. The letter references, "We want to see about placement of walls and windows and doors." And our desire was to have a space where we could design the layout and select where our various personnel would be without having doors and walls in the way when we moved in there.

To that date, we had not seen such a space. At that point, our feeling was that was the only way we could get such a space. As it turns out, the Madison building was in fact an old warehouse. It had no walls or doors and we ended up being able to get that type of space anyway.

Senator MURKOWSKI. But the building I am referring to would meet the needs with the renovation, is that what you are saying, or would not?

Mr. EPES. The Brookwood location?

Senator MURKOWSKI. That's correct. I want to ask——

Mr. EPES. The building wasn't built. We thought we could build a building that would meet our specifications, yes, sir.

Senator MURKOWSKI. Your concern with the Madison building was that it was too small, it was an unsafe neighborhood?

Mr. EPES. I was not worried about it being too small. It was a security problem at this point.

Senator MURKOWSKI. So you didn't favor the Madison building, that is clear. The record will reflect that.

Mr. EPES. That's right.

Senator MURKOWSKI. Let's talk about your meeting with Governor Clinton that occurred sometime in March 1984. You told the Governor that your staff didn't want to work in the Madison building because the area was unsafe; is that correct?

Mr. EPES. Yes, sir. Many.

Senator MURKOWSKI. What did the Governor say?

Mr. EPES. He said that area was being redeveloped, that that situation would change, and that in fact, he lived in that neighborhood and he felt like it was good State policy to locate offices in that part of town, which is being redeveloped.

Senator MURKOWSKI. Did you know of any connection the Governor had with Madison or McDougal at that time? Did you have any reason to believe there was a connection or involvement?

Mr. EPES. I knew they were friends.

Senator MURKOWSKI. Were you sensitive to that in the discussion that you were having with the Governor? Did you have that feeling

that, well, clearly the Governor has an interest here because he is friends with McDougal?

Mr. EPES. No, sir, I didn't.

Senator MURKOWSKI. You didn't have that background?

Mr. EPES. I knew the background, but I was not sensitive to it because probably wherever we would go, the Governor would have known whoever the landlord was.

Senator MURKOWSKI. Is it unusual for the Governor to be involved in selection of a building?

Mr. EPES. No, sir, in fact he chose not to get involved.

Senator MURKOWSKI. Well, he was at the meeting?

Mr. EPES. I called the meeting, yes, sir.

Senator MURKOWSKI. You called it, but the Governor came?

Mr. EPES. I went to his office. I asked him to overrule one of my coequals, you might say, another department head, and the only way to get that department head's decision changed, I felt, was to go to our superior.

Senator MURKOWSKI. That issue was the selection—the pressures on you for the selection of the Madison building; is that correct?

Mr. EPES. I would say—

Senator MURKOWSKI. You wanted to be relieved of that pressure?

Mr. EPES. It wasn't pressure. The building services job is to locate offices for agencies, and they generally direct those agencies where to go.

Senator MURKOWSKI. They directed your agency to go to the Madison building, and you appealed to the Governor not to go to the Madison building because of concerns over safety?

Mr. EPES. Yes, sir.

Senator MURKOWSKI. That was the purpose of your meeting with the Governor?

Mr. EPES. Right, yes, sir.

Senator MURKOWSKI. Mr. Mallard stated during the meeting that he thought you should rent the building; is that correct?

Mr. EPES. Excuse me? Rent the space that we occupied, yes, sir.

Senator MURKOWSKI. Yes.

Mr. EPES. Yes, sir, right.

Senator MURKOWSKI. What was your attitude toward that statement? Were you adamant that the building was not appropriate during your meeting with the Governor?

Mr. EPES. As I recall the meeting, I stated the concern that my staff had about being located in that location. As a director of that agency, I wanted to have a staff that felt good about coming to work in the morning.

As a matter of fact, I lived eight blocks from there and I was not terribly concerned about it myself.

Senator MURKOWSKI. Did the Governor imply that he still wanted you to rent the building, that he would take care of the security, or he would ensure that the area of concern relative to safety was taken care of?

Mr. EPES. I don't recall what he said about our concern. He—I don't remember. I think possibly he said he would look into that. But I do recall that at some point after the meeting, and soon after we moved into the building, there was a security guard secured on duty during the day while we were there in the building.

Senator MURKOWSKI. What occurred during the meeting with the Governor that caused you to go ahead and rent the building?

Mr. EPES. He said he was not going to overrule the decision of Mr. Mallard.

Senator MURKOWSKI. So he basically told you then that your appeal for the safety of your workers was going to be overruled relative to your request, and that indeed the State of Arkansas was going to proceed with the Madison building, and that was the end of it?

Mr. EPES. He didn't put it in those words. I knew enough about procedure to know that that was the case, yes.

Senator MURKOWSKI. Clearly the Governor made the decision?

Mr. EPES. Well, Mr. Mallard made the decision, yes, sir.

Senator MURKOWSKI. He was at the meeting with the Governor?

Mr. EPES. No, sir.

Senator MURKOWSKI. He wasn't at the meeting with the Governor. Did the Governor say he wanted you to rent the building?

Mr. EPES. The Governor said he was not going to overrule Mr. Mallard's decision, that he felt it was good policy.

Senator MURKOWSKI. The Governor said that he wanted the part of the town where the Madison building was located to be renovated, but isn't it true that all government leases in that area went to buildings owned by Madison and Jim McDougal? Isn't that a little bit strange, in your opinion? You know the area. You know the real estate.

Mr. EPES. Well, I am not an expert in that field.

Senator MURKOWSKI. You don't have to be, and I am not asking you that.

Mr. EPES. There weren't many pieces of real estate down in that part of town that would have been suitable for an agency. Most of them were storefronts. This was an old warehouse.

Senator MURKOWSKI. Is it true that for the most part, the government leases in that area went to buildings owned by Madison and Jim McDougal?

Mr. EPES. It is true that there were two leases that went to them, yes, sir.

Senator MURKOWSKI. Who scheduled the meeting with the Governor?

Mr. EPES. I believe I did. It has been too long, I can't recall.

Senator MURKOWSKI. The bottom line is after the meeting you basically rented a building owned by Jim McDougal?

Mr. EPES. I am not sure if he owned it individually. Some entity that he had an interest in owned the building, yes, sir.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste. But before I do that, I understand that this area of Little Rock has improved over the years, actually since you went in there on this lease; correct?

Mr. MALLARD. That's correct, very much so.

Senator SARBANES. Would it be accurate to say that the presence of the State agency helped to contribute to that taking place, the upgrading of the neighborhood?

Mr. MALLARD. I would say totally.

Senator SARBANES. This was an old section of town; right.

Mr. MALLARD. Right, South Main was an old section.

Senator SARBANES. It was a section of town in which the Governor's Mansion was located?

Mr. MALLARD. Right.

Senator SARBANES. Somebody told me it was separated from the other side of town by a major expressway; is that correct?

Mr. MALLARD. Interstate 630.

Senator SARBANES. It is regarded in a sense as sort of the other side of the tracks; is that correct?

Mr. MALLARD. Probably so.

Senator SARBANES. You were dealing with a lower social and economic population in this neighborhood; is that right?

Mr. MALLARD. Yes.

Senator SARBANES. Was that the source of your concern about security, Mr. EPES?

Mr. EPES. I want to make it clear it was not my concern. It was my staff's concern. I lived eight blocks from there myself.

Senator SARBANES. So you are in that neighborhood yourself?

Mr. EPES. Yes, sir.

Senator SARBANES. Has the neighborhood improved over the years?

Mr. EPES. Yes, sir. I don't live there any longer. The property I own there is rental property and the rent has gone up.

Senator SARBANES. Thank you.

Senator MURKOWSKI. Mr. Chairman, isn't the point here simply to draw a conclusion that the Governor played a major role in the selection of this building?

The CHAIRMAN. Well, I think we have to look at the facts as we hear them and as we can establish, I think we can go to conclusions and reasonable people can draw conclusions from the facts as established. I don't believe, at this point in time, we can say that the Governor initiated this, but certainly—and stop the green light, please, because I don't want to impede on the time that should be yielded.

But I am going to make an observation. I think some of the testimony, as it comes in—and I will ask a couple of questions—is almost disingenuous at this point in time and we will get to it.

Obviously, someone brought this to the Governor's attention, and he made a decision, and that decision supported the conclusion by Mr. Mallard. Now how Mr. Mallard got to that, why they got to it, whether or not it was as a result of the relationship that existed between the Clintons and the McDougals, reasonable people may make their differences on that.

The value that one places in the recollection of Ms. Hays and the memo which outlined the conversation which the attorney for Peacock in which he came in and made these statements, all of those things have to be weighed.

Then people have to come to a conclusion based upon the rules of reason and logic. So, I think that people, some may come to one conclusion, some may come to another.

By the way, it is not difficult to support undertaking a project in an area. Governments oftentimes do, to help rehabilitate. I have seen that in Long Island and the town of Hempstead where we made many efforts in terms of attempting to take space, et cetera,

move a court. I know that the county went out of their way to put a court facility in the middle of a village that had seen a decline, to attempt to bring about revitalization.

Again, that is one aspect, that is one claim. But you have to weigh it all, and that is what we are going to attempt to do. So I will ask that the green light go on and yield to Senator Sarbanes.

Senator SARBANES. I think we have been sort of circling around the bush. This was a black neighborhood, wasn't it?

Mr. MALLARD. Yes, predominantly, yes.

Senator SARBANES. There was an effort to try to revitalize the black neighborhood, wasn't there, by the location of this—

Mr. MALLARD. It was an effort to revitalize the Quapaw Quarters which incorporated all races.

Senator SARBANES. That's right. And as it turned out, it in fact worked, as you say, you think a lot of it because of this; correct?

Mr. MALLARD. That's correct. All of downtown, not just this area. I think we helped all of downtown Little Rock.

Senator SARBANES. Thank you.

Mr. BEN-VENISTE. If I may, the testimony doesn't exactly fit with the gloss that some people would like to put on it. Some people would like to say that the Governor directed you, Mr. Mallard, to make a decision to select this property. Did that happen?

Mr. MALLARD. I never discussed it with the Governor. The Governor never discussed any leases with me in 4½ years.

Mr. BEN-VENISTE. So unpleasantly for some people who would like to interpret this as being a directive coming from Governor Clinton, that is not what happened, was it, Mr. Mallard?

Mr. MALLARD. No, it did not happen.

Mr. BEN-VENISTE. Now with respect to your decision, your decision was based on the criteria that you have testified to here today; is that correct?

Mr. MALLARD. Correct.

Mr. BEN-VENISTE. It is your testimony, if I understand it, that nobody raised with you or pressured you to select the Madison property; correct?

Mr. MALLARD. That's correct.

Mr. BEN-VENISTE. That was your decision to make; is that so?

Mr. MALLARD. That was my decision.

Mr. BEN-VENISTE. Let me go to the second part of that suggestion, if I may, that the Governor somehow inserted himself in the process and directed that this property be the one selected. That is not what happened in the appellate process, is it Mr. Epes?

Mr. EPES. No, sir.

Mr. BEN-VENISTE. Your testimony, if I understand you correctly, sir, was that while you conveyed to the Governor's office the concern expressed by certain employees in your agency but not held by you personally, that you nevertheless felt it appropriate to express the concern of certain employees about safety issues. You did so, and the Governor, as I understand your testimony, said that, on the basis of all the facts involved, he would not overturn Mr. Mallard's decision.

Mr. EPES. That's exactly what happened.

Mr. BEN-VENISTE. OK. Now, you have been asked, Ms. Hays, to give testimony about certain things that are coincident in time to

events that are mentioned on the chart which has been displayed here, and before we get too far into that, because there is a notation on a chart that I see for the first time here, contributions to Whitewater by the McDougals and Clintons, that there is to be some discussion of that.

What I would call to the attention of the Chairman, if I may from page 77 of the Pillsbury Madison & Sutro Report adopted by the Resolution Trust Corporation dated December 13, 1995, the following, "Therefore, on this record there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances, or the source of the funds used to make payments or bank debt."

I would like to cede my time at this point to Mr. Kravitz.

Mr. KRAVITZ. Thank you, Mr. Ben-Veniste.

Mr. Epes, as you may know, next week the Committee is scheduled to hold a hearing on some questions relating to bond underwriting contracts that were awarded by the AHDA, the Arkansas Housing Development Authority, and the ADFA, the Arkansas Development Finance Authority. You are not scheduled to appear at next week's hearing, so I thought we might take advantage of your presence here today to ask you a few questions.

Just as an introduction, can you tell us, what was the purpose or what were the purposes of those two agencies in raising money through the sale of municipal bonds?

Mr. EPES. The Arkansas Housing Development Agency was established in 1977 for the purpose of issuing mortgage revenue bonds, tax-exempt mortgage revenue bonds for single-family housing for low- to moderate-income individuals, and also multifamily housing revenue bonds for multifamily housing development; which set aside certain units in those developments for low- to moderate-income tenants.

Mr. KRAVITZ. And what about the ADFA, when it succeeded the AHDA?

Mr. EPES. The ADFA succeeded the AHDA and took over the housing authority powers to issue bonds for those authorities; as well, it was expanded for the purpose of issuing tax-exempt revenue bonds for agricultural business development, first-time farmer program, public facilities for the State of Arkansas. We financed prisons and some other things like that, and other public facilities to be the centralized revenue bond issuer for the State of Arkansas.

Mr. KRAVITZ. Mr. Chairman, I see that the yellow light is on. Perhaps we can come back to that?

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I want to go back to the fundamentals of this Ms. Herr, as I understand it, when you began this process in 1988 of helping Mr. Epes' agency find space, Mr. Mallard didn't say to you I want you to confine your looking to this downtown area because we want to redevelop it?

Ms. HERR. No, he did not.

Mr. CHERTOFF. So there was no mention when you started out on this project that there was some plan to revitalize downtown Little Rock and you should focus your attention on it; right?

Ms. HERR. Yes, you are right. But there was an unwritten policy at that time that when we could, when possible, and when the rental rate was satisfactory, we would try to locate agencies in the downtown area which did encompass this area.

Mr. CHERTOFF. So you solicited from some of the landlords downtown to see if they had space; right?

Ms. HERR. Oh, yes.

Mr. CHERTOFF. But Mr. Mallard got involved in this particular project when Ms. McDougal came to him and you had a meeting with Mr. Mallard and Susan McDougal; right?

Ms. HERR. That's when I first knew about it, yes.

Mr. CHERTOFF. After you had come back to Mr. Mallard with Mr. Epes' agency's decision not to take the space in McDougal's building, Mr. Mallard told you—and this is your own language—that the Governor's office wanted to have Mr. Epes lease the Madison space because of the development of the Quarter area and because the McDougals were friends of the Clintons; right?

Ms. HERR. That's the way I recall it.

Mr. CHERTOFF. Mr. Mallard brought up the friendship between the McDougals and the Clintons; right?

Ms. HERR. Yes, he did.

Mr. CHERTOFF. Then you indicated earlier in your testimony that there was a second occasion, somewhat later, where Mr. Mallard repeated to you the fact that he wasn't going to consider other proposals, that the Governor's office wants us to lease the space and that's the way it's going to be. You got that from Mr. Mallard; is that right?

Ms. HERR. Yes, I did.

Mr. CHERTOFF. Mr. Mallard, do you deny saying that to Ms. Herr?

Mr. MALLARD. I cannot remember saying anything like that.

Mr. CHERTOFF. It could have happened, you don't remember, or it didn't happen?

Mr. MALLARD. In my mind it did not happen, no.

Mr. CHERTOFF. So you dispute Ms. Herr's recollection of this?

Mr. MALLARD. I do.

The CHAIRMAN. You say it didn't happen?

Mr. MALLARD. I said it didn't happen.

The CHAIRMAN. Did Susan McDougal come to you?

Mr. MALLARD. Yes, I'm sure she did.

The CHAIRMAN. Did you tell Ms. Herr, Mr. Mallard, that Susan McDougal came to see you?

Mr. MALLARD. I'm sure I did, yes.

The CHAIRMAN. Did she make this up about the fact of the Governor, et cetera, and you weren't going to change your mind and that they were friends, and therefore this is where you were going to go, that the Governor wanted this? She just dreamed this up?

Mr. MALLARD. I do not remember saying that at all.

The CHAIRMAN. You have worked with her for a long time, haven't you?

Mr. MALLARD. A long time.

The CHAIRMAN. You don't think she made this up?

Mr. MALLARD. I'm not sure.

The CHAIRMAN. You think maybe she made it up? Isn't it more likely you are feigning this memory, recollection? You don't remember this situation whether or not you told her? You think she just dreamed up that the Governor—we are talking about facts and reasonableness. Now, you really think that she just made this up?

Mr. MALLARD. Senator, people assume things.

The CHAIRMAN. Oh, assume?

Mr. MALLARD. Assume things, correct.

The CHAIRMAN. She may have assumed it on the basis of what you told her?

Mr. MALLARD. Maybe on the basis of what someone else told her.

The CHAIRMAN. She says you told her.

Mr. MALLARD. I dispute that, yes.

Mr. CHERTOFF. When you were asked about this in your deposition, at page 44, Mr. Mallard, you were asked this:

Question: Do you remember any meetings you had with Ms. Vowell or Ms. Herr with regard to the lease, the AHDA lease? Did you ever say to her that one of the reasons why you were going forward with the lease was because the McDougals were friends of the Clintons and there was a desire to help out the McDougals?

Answer: No, I don't specifically remember any conversation like that. You know, I am sure it was assumed. You know, everybody assumed that everybody was friends with the Governor.

Are you telling us now you actually are positively disputing Ms. Herr's account, under oath, in deposition and here, that you said to her that the reason that you wanted to go forward with this lease of the McDougals' building is because, in part, the McDougals were friends of the Clintons? You dispute that?

Mr. MALLARD. Yes, I dispute that, yes.

Mr. CHERTOFF. Is it a fact, Ms. Herr, that Mr. Epes continued to complain to you about that building even after the lease was signed?

Ms. HERR. Yes, he did.

Mr. CHERTOFF. Would you agree with me that during the year after that lease in Mr. McDougal's building was signed on April 1, 1984, during that next year, probably every time you talked to Mr. Epes he said to you he wanted out of that building?

Ms. HERR. There were several times that they voiced their complaints about the building, yes.

Mr. CHERTOFF. But then a year later they took more space in the building; that's also true?

Ms. HERR. That's true.

Mr. CHERTOFF. As far as you are concerned, Ms. Hays, you don't know anything about leases except what you heard from Mr. Hopkins; right?

Ms. HAYS. Right.

Mr. CHERTOFF. You do not have any connection with any of the other people on the panel in terms of their work on the leases; is that right?

Ms. HAYS. That's right.

Mr. CHERTOFF. But you do know that Mr. Hopkins came in and he was angry and he told you some things?

Ms. HAYS. Right.

Mr. CHERTOFF. He told you about people maybe going to prison?

Ms. HAYS. Right.

Mr. CHERTOFF. What was your reaction to that?

Ms. HAYS. I wasn't surprised.

Mr. CHERTOFF. You were not surprised based on what you had seen and heard at Madison?

Ms. HAYS. Right.

Mr. CHERTOFF. What did he tell you about the campaign contributions, the campaign fundraiser, and the connection with the leases?

Ms. HAYS. I believe he said that proceeds from the Dixie Continental loan had gone to the Clinton's Gubernatorial Campaign and that Governor Clinton had arranged for the State to lease office space from Madison or McDougal.

Mr. CHERTOFF. In fact, what you told Mr. Miller was an accurate statement of what Mr. Hopkins told you; right?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. What you told Mr. Miller was that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock; right?

Ms. HAYS. I know that is in the memo. I don't have any reason to believe it is inaccurate, but I don't remember those exact words.

Mr. CHERTOFF. I understand that, but you do remember telling Mr. Miller at the time when it was fresh in your mind, as best as you can recall what happened?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. He was your lawyer, so you had no reason not to be completely forthright with him?

Ms. HAYS. Right.

Mr. CHERTOFF. In fact, it is true that unbeknownst to perhaps Mr. Hopkins that in fact this space was on Main Street; right, this space we are talking about?

Ms. HAYS. Right.

Mr. CHERTOFF. And in 1985, there was not only an expansion of the rental of the State agency in the main building, but there was an additional new lease at the building across the street; right?

Ms. HAYS. Right.

Mr. CHERTOFF. That new lease, Ms. Herr, that was what had been a gas station?

Ms. HERR. Yes, sir, it had.

Mr. CHERTOFF. During your tenure in this period, the only buildings in this area that the Governor wanted to revitalize that wound up getting State leases were Mr. McDougal's bank building and the gas station across the street that Mr. McDougal owned; right?

Ms. HERR. In that immediate vicinity, but only six blocks down the street was the Dongy Foundation that Mr. Epes had occupied space in before, and there was a large presence of the State in that facility.

Mr. CHERTOFF. That was longstanding?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. But in terms of getting new leases, in terms of his notion we are going to try to revitalize and move some of the State offices into this particular area, the Quapaw Quarter, the only buildings in that area that wound up getting State leases were McDougal buildings?

Ms. HERR. That's true. They were the only ones that came to us to develop property.

Mr. CHERTOFF. Do you know why the gas station across the street was considered a suitable property for the State agency?

Ms. HERR. No, sir, I don't.

Mr. CHERTOFF. You were not involved in that one?

Ms. HAYS. No, I wasn't.

Mr. CHERTOFF. Mr. Mallard, do you remember why the gas station was——

Mr. MALLARD. I was not involved in that lease.

Mr. CHERTOFF. Who did that one for your agency?

Mr. MALLARD. I think that—I believe it was Marsh Patterson. He was an agent in the leasing department.

Mr. CHERTOFF. In your office?

Mr. MALLARD. In my office.

Mr. CHERTOFF. Under your supervision?

Mr. MALLARD. Under my supervision.

Mr. CHERTOFF. You don't know about this one?

Mr. MALLARD. Well, of course I signed the lease at the end of it, but I think he and the leasing agent for the Revenue Department is the one that worked this lease out.

Mr. CHERTOFF. Did you know it was a gas station?

Mr. MALLARD. I can't recall any specifics about it at all——

Mr. CHERTOFF. Now——

Mr. MALLARD. —but you can make a gas station into a castle if you want to.

Mr. CHERTOFF. You can make a silk purse out of a sow's ear.

Mr. MALLARD. If one has enough money, you can do that, that is right.

Mr. CHERTOFF. The question is why you would choose to do it. You don't deny that you knew the McDougals; right?

Mr. MALLARD. Yes, I knew Jim McDougal for many years.

Mr. CHERTOFF. Jim McDougal never said to you he had a friendship with the Clintons?

Mr. MALLARD. You know, I can't recall whether he did or not, but I knew he had a friendship with the Clintons.

Mr. CHERTOFF. You knew he had a business relationship?

Mr. MALLARD. I didn't at the time. If I did, you know——

Mr. CHERTOFF. Did you know that \$300,000 worth of lease payments over 5 years would go a long way toward improving the balance sheet on Mr. McDougal's real estate company there, Madison Financial?

Mr. MALLARD. We did not delve into people's balance sheets or what it would do for their——

Mr. CHERTOFF. But you knew, as matter of common sense, that when you have a landlord of a commercial building and he is giving a guaranteed 5-year lease that is going to total \$300,000 that will occupy some of his vacant space in an area of the city that people don't want to occupy, that will be a dramatic improvement in his balance sheet, because that asset, that building will be worth more because all of a sudden it is getting rent coming in; right? That is just common sense; right?

Mr. MALLARD. I would suppose so, yes.

Mr. CHERTOFF. Did you know Mr. McDougal had a business venture with the Clintons and that some of what McDougal was doing with his money was putting money into that business venture?

Mr. MALLARD. At the time I don't think I did.

Mr. CHERTOFF. Looking with hindsight, do you see a financial relationship or financial benefit here that if Mr. McDougal improves his balance sheet, if he has rent income coming in from the State, if the examiners see that his real estate operation now has a building which has occupancy from a good tenant, you understand how that might improve Mr. McDougal's financial picture and might help him continue with his financial operations? Make sense?

Mr. MALLARD. With anybody we lease with, that was something that was sought after, was a State lease.

Mr. CHERTOFF. It was sought after?

Mr. MALLARD. With everybody, every tenant.

Mr. CHERTOFF. I bet a lot of landlords in what Ms. Herr has described as a soft market wanted to get some of those leases?

Mr. MALLARD. It is still that way today, I'm sure.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. The issue of Governor Clinton having a social relationship with the McDougals, did that surprise you, Mr. Mallard?

Mr. MALLARD. Not particularly. He had a social relationship with everybody in the State of Arkansas.

Mr. BEN-VENISTE. Ms. Herr, did anybody try to hide the fact that the McDougals had a social relationship with the Clintons back in 1983?

Ms. HERR. No.

Mr. BEN-VENISTE. When Mrs. McDougal visited your agency, did you not meet with her?

Ms. HERR. Yes, I did.

Mr. BEN-VENISTE. I'm not trying to suggest to you that you may have been inaccurate in your recollection, but do you recall whether Mrs. McDougal may have mentioned that she and Mr. McDougal had a relationship of a social nature with the Governor?

Ms. HERR. I don't think that she ever specifically said that to me, but Arkansas is a very small State, and it was common knowledge that the McDougals were friends with the Clintons.

Mr. BEN-VENISTE. Indeed, if now you are sitting here 13 or 14 years after the event and someone has said to you oh, the Clintons were friends with the McDougals but no one disclosed that to you at the time, then you would have been taken advantage of because this thing was happening behind the scenes. You see how that could go just the other way?

Ms. HERR. Yes, sir.

Mr. BEN-VENISTE. So, in fact, you knew that the Clintons had a relationship, you looked at the economics of the deal, the economics of the deal made sense, the location of the deal was consistent with a longstanding policy, if I understand you correctly?

Ms. HERR. That's correct.

Mr. BEN-VENISTE. About trying to locate in the downtown areas where it was feasible. This was a situation where it was feasible, was it not, Mr. Epes?

Mr. EPES. Yes, sir.

Mr. BEN-VENISTE. On the basis of all of that, the decision was made and it was not overturned.

Now with respect to the gas station, when it was converted to the revenue office, as we have heard, it was not a gas station at the time it was operating as a revenue office for the State; correct?

Ms. HERR. That's correct.

Mr. MALLARD. That's correct.

Mr. BEN-VENISTE. It was, the piece of property had been a gas station and there was a structure, I trust, built on it. If we could go back in time and someone had some yellowed newspaper clipping of the opening of the revenue office in that area, we could see what it looked like, I take it?

Ms. HERR. That's correct.

Mr. BEN-VENISTE. But, indeed, the revenue office, as we have developed in our testimony, wished to move from the location it was in, which was not far away from where it relocated to, the renovations were acceptable and desirable, and they were happy with the location; is that correct as far as you know?

Ms. HERR. Yes, sir. In fact, the other day, just to refresh my memory on what that part of the city looked like, I drove by there, since I knew I was coming up here, and the revenue office is still in that same location.

Senator SARBANES. What kind of revenue office was this? What do they do in this revenue office?

Ms. HERR. License plates and driver's licenses. It is their office that deals with the public.

Senator SARBANES. It is where the public comes in to be served?

Ms. HERR. Yes.

Senator SARBANES. Are there a lot of such revenue offices across the State of Arkansas?

Ms. HERR. Yes, there are.

Senator SARBANES. They are located in order to serve the constituency?

Ms. HERR. That's correct.

Senator SARBANES. In fact, if the neighborhood didn't have one, depending on the size of the neighborhood, but they could complain that they were not being properly serviced by the State?

Ms. HERR. They are located in populated areas around the State.

Mr. BEN-VENISTE. So in addition to it moving into a more desirable location than where it existed before, from the standpoint of the officers and employees of the revenue office, it was desirable to service the residents in that part of town with a revenue office?

Ms. HERR. Yes.

Mr. BEN-VENISTE. Let me turn, Ms. Hays, to Mr. Chertoff's last line of questions, because I think it is pretty important to look at Mr. Hopkins' statements to you in 1987 about events which he claimed to have taken place in 1985, although he wasn't presumably a part of those arrangements, but we will question him about that. Would you just look at the chart, it shows the Madison fundraiser at the very bottom of that first chart. You see that is April 1985; right?

Ms. HAYS. I see that, yes.

Mr. BEN-VENISTE. Everybody knew that the State agency had moved into the headquarters on Main Street.

Ms. HAYS. I did not work at Madison until June 1985, so I don't know——

Mr. BEN-VENISTE. Presumably people in town knew that the housing authority had moved into those quarters.

Ms. HAYS. I assume so.

Mr. BEN-VENISTE. By 1987, memories may have dimmed about when exactly they moved in.

Ms. HAYS. True.

Mr. BEN-VENISTE. If there was going to be a quid pro quo, as is suggested on page 3 of the memorandum prepared reflecting your conversation with Mr. Hopkins, then the contribution, as Mr. Hopkins says, that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock in return for the substantial contribution made by Mr. Peacock. That's the import of what was said to you; right?

Ms. HAYS. Right.

Mr. BEN-VENISTE. However, the fallacy in such a notion is that, while the fundraiser occurred in April 1985, the lease arrangements that we have been discussing here all morning occurred in early 1984; is that correct, Mr. Mallard?

Mr. MALLARD. I would have to refer back to the lease, but I think you are right.

Mr. BEN-VENISTE. Am I correct, Ms. Herr, in my recollection that the lease was negotiated in late 1983 and signed up in April 1984?

Ms. HERR. That's correct.

Mr. BEN-VENISTE. A full year before the contributions that Mr. Hopkins is telling you were a quid pro quo; is that right, Ms. Hays, if you accept those dates?

Ms. HAYS. I don't know that that is exactly right. I think Mr. Hopkins was saying that the proceeds from the Dixie Continental Leasing loan were what he considered to be the campaign contributions by Mr. Peacock, and I don't know the date that that loan was made.

Mr. BEN-VENISTE. If you accept that the contribution was made in April 1985, as reflected on the chart that the Majority has prepared here, you know now, from listening to the testimony, just as we know, that the decision to relocate and lease space from Madison at its headquarters on Main Street in Little Rock occurred a full year before. So instead of a quid pro quo, we are talking about a quo pro quid.

Ms. HAYS. I don't know. I don't know that this April 1985 fundraiser is the only contribution that Mr. Hopkins was talking about. But I can't disagree with what you are saying.

Mr. BEN-VENISTE. If in fact it is, and we will hear from Mr. Hopkins, but since the matter has been raised and pressed again with you in the absence of Mr. Hopkins to be examined on it, I thought it important to set out the chronology just so you were advised and while we have our panel here to talk about the chronology of events, what Mr. Hopkins said. And I will read that again, "Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contributions, Bill Clinton as-

sured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock." That was in 1984; the fundraiser occurred a year later in April 1985.

Ms. HAYS. Right.

Senator SARBANES. Ms. Hays, at the time that Hopkins called you, that was right in the aftermath of having the bankruptcy court dismiss the claim with prejudice; is that correct?

Ms. HAYS. That's right.

Senator SARBANES. Of course, that then puts you back in the position of being able to go after Peacock on this loan; is that correct?

Ms. HAYS. Yes, sir.

Senator SARBANES. Now, Mr. Miller says in this memo, which he wrote, I take it, to a partner in his firm, on the basis of a conversation with you—

Ms. HAYS. Yes.

Senator SARBANES. He says that he thought that Hopkins was severely embarrassed as a result of having the Chapter 11 dismissed with prejudice after he had made representations to his client that everything would be taken care of. Is that the impression you had, too, about Hopkins?

Ms. HAYS. Yes, sir, yes.

Senator SARBANES. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Hays, again, to go back to this chronology which of course we started out with, and I understand again, to be clear, you are testifying to what Hopkins told you. You repeated it to Miller, Miller made a memo of it. Obviously, you are not in Hopkins' mind, but you gave your lawyer as accurate a rendition of what Hopkins told you as you could at the time.

Let's go back to the chronology. The original discussion about the first lease in the main Madison building occurs in April 1984, and we now have some evidence—I guess there is a dispute in the evidence, but at least we have the testimony of Ms. Herr that she was told by Mr. Mallard that the Governor's office wanted this done in 1984. And we know from Mr. Epes that there was a meeting with the Governor on that.

Now, we come to 1985, and the dates here get very interesting. We have the Dixie Continental lease loan, and then we have the April 4, 1985 fundraiser. We know from Ms. Herr during that intervening year that Mr. Epes keeps saying we want to get out of the building, we want to get out of the building. And it doesn't take a great leap of common sense to realize that a landlord who has a tenant who is complaining is going to want to take steps to make sure that that tenant stays in the building.

So you have an April 4th fundraiser. On April 9th, 5 days later, Mr. Epes' agency indicates they now want to look for additional space. They contact the leasing office and yet, what do you know, at the end of the day, they wind up taking that additional space, I think it is at a lease rate of about \$13,000 additional per year in the very same building. So that's the chronology if we match it up against the set of events here.

Now let me turn to a different subject for a moment. While you were working at Madison, you had some responsibility for supervising or managing the legal work?

Ms. HAYS. That's right.

Mr. CHERTOFF. That involved dealing with outside counsel and retaining them and generally supervising them?

Ms. HAYS. Right.

Mr. CHERTOFF. Did there come a time that you learned that the Rose Law Firm was receiving a regular \$2,000 a month retainer or advance on fees from Madison Guaranty Savings & Loan?

Ms. HAYS. Yes.

Mr. CHERTOFF. How did you learn about that?

Ms. HAYS. I think that Greg Young who was the CFO might have told me about it. I'm not really certain.

Mr. CHERTOFF. The CFO meaning the Chief Financial Officer?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. What was your response?

Ms. HAYS. I can't remember exactly when I first learned about it. I know that, for a time, the Rose Firm did work for Madison, so I didn't think there was anything unusual about that. Later, since I was the one sending out the legal work and I knew I wasn't sending it to the Rose Firm, I questioned why we continued to pay the retainer.

Mr. CHERTOFF. When you say "retainer," you mean the advance fees, the regular \$2,000 a month fees?

Ms. HAYS. Yes.

Mr. CHERTOFF. Who did you raise that question about the payment to the Rose Law Firm with?

Ms. HAYS. John Latham.

Mr. CHERTOFF. And he was, at that time, what was his position with the bank?

Ms. HAYS. He was CEO and Chairman of the Board.

Mr. CHERTOFF. That's Chief Executive Officer?

Ms. HAYS. Yes, sir.

Mr. CHERTOFF. What did Mr. Latham tell you about why this money was being paid to the Rose Law Firm?

Ms. HAYS. He said it was Jim's—meaning Jim McDougal's—deal, and not to question it.

Mr. CHERTOFF. And after that you just didn't question it?

Ms. HAYS. Not until after Mr. McDougal left.

Mr. CHERTOFF. What happened after Mr. McDougal left? Did you question it then?

Ms. HAYS. I think it was discontinued.

Mr. CHERTOFF. Did you also have occasion from time to time when Mr. McDougal's regular assistant or secretary was absent to occasionally handle Mr. McDougal's phones?

Ms. HAYS. I did at one time, yes, for a week.

Mr. CHERTOFF. Do you remember, did he have any particular arrangement about certain people being rung through to him directly and certain people going through the receptionist?

Ms. HAYS. I don't really remember. All of his calls I think came through the secretary and then went to him, I think.

Mr. CHERTOFF. How long did you deal with his telephone? For what period of time?

Ms. HAYS. One week.

Mr. CHERTOFF. During that week, did he have any contact with Governor Clinton?

Ms. HAYS. I took one or two messages from the Governor's office.

Mr. CHERTOFF. And do you remember what the messages were about?

Ms. HAYS. No, sir. I just took name and phone number.

Mr. CHERTOFF. Finally, let me ask you about that gas station across the street which became the revenue office; do you know whether an individual named Davis Fitzhugh had a connection with that?

Ms. HAYS. I thought he owned it.

Mr. CHERTOFF. Mr. Fitzhugh also worked at Madison Guaranty Savings & Loan; right?

Ms. HAYS. Yes.

Mr. CHERTOFF. Was there a point that Mr. Fitzhugh bought the building at the request of Mr. McDougal?

Ms. HAYS. I believe that's correct.

Mr. CHERTOFF. Do you know why that was?

Ms. HAYS. No.

Mr. CHERTOFF. Now let me show you a memo dated December 17, 1985, to Davis Fitzhugh from Sue Strayhorn. It makes reference again to someone who is looking for space at 1300 Main. Is 1300 Main where Madison had its headquarters?

Ms. HAYS. No, sir.

Mr. CHERTOFF. Was it another Madison building?

Ms. HAYS. Yes, it was a building owned by Madison, a few blocks away from the bank headquarters.

Mr. CHERTOFF. So that was another McDougal building; right?

Ms. HAYS. I'm not sure it was McDougal, but it was some affiliated party.

Mr. CHERTOFF. It says here, "Ms. Margaret Carter came by this morning to see Jim McDougal, and was referred to him by Bill Clinton and Guy Barry. She is interested in leasing space for an art studio, possibly upstairs at 1300 Main. She can afford approximately \$500 per month, plus utilities, for comparable floor space. If not at 1300 Main, then something similar." Do you remember people coming by on referrals from the Governor about possibly finding space in Madison building buildings?

Ms. HAYS. No, sir.

Mr. CHERTOFF. So you don't know about this particular incident?

Ms. HAYS. I have never seen this before.

Mr. CHERTOFF. Obviously, we are going to be hearing from Mr. Hopkins in a very short while. This memo, which was prepared based upon what you told Mr. Miller in 1987, when it was fresh in your mind—indeed, it has been several years since then—have you had occasion in the last year to talk to Mr. Hopkins about this particular conversation you had that was later written down in this memo?

Ms. HAYS. Yes, I have.

Mr. CHERTOFF. When did you talk to him about it?

Ms. HAYS. I can't remember exactly. It was after the reporter came to my home with the memo and I was interviewed for the newspaper article, sometime thereafter, and I can't say whether it

was within a few weeks or a few months, I ran into Mr. Hopkins at lunch one day and we discussed it.

Mr. CHERTOFF. What did he say to you?

Ms. HAYS. Well, first, we were kind of talking to each other about how we were getting tired of reporters and people bugging us about things that happened 10 years ago. I said I couldn't remember a lot about it. All I told him was that it was probably a lot of posturing on your part, and he said yes, that's right, that's all it was.

Mr. CHERTOFF. Did he indicate that he remembered having had the conversation with you?

Ms. HAYS. Sure.

Mr. CHERTOFF. Did he indicate he had seen this memo that Mr. Miller made of the conversation?

Ms. HAYS. He said that the reporter had brought it to his office and tried to make him read it. I'm not certain that he actually complied with the request.

Mr. CHERTOFF. Did he deny having had the conversation with you about this matter?

Ms. HAYS. No, sir. We talked about it.

Mr. CHERTOFF. So he clearly indicated at least as of last summer that he had a recollection of this conversation?

Ms. HAYS. Yes.

The CHAIRMAN. Let me, if I might, just touch on one thing. There comes a point in time when you say to Mr. Latham why are we still sending \$2,000 a month to the Rose Law Firm; is that right?

Ms. HAYS. That's right.

The CHAIRMAN. The reason was because you knew that the legal work was being done, was being farmed out to others; right?

Ms. HAYS. That is correct, at least what I was doing. Someone else could have been sending something else.

The CHAIRMAN. Mr. Latham said to you what, as best as you can recall?

Ms. HAYS. It's Jim's deal, don't question it.

The CHAIRMAN. It's Jim's deal, don't question it. All right.

I want to thank you. But I will note, Mr. Latham and others notwithstanding, that we have at least public statements at one point in time from Mr. McDougal how this came about, how the retainer of the Rose Law Firm, and then somewhat ambiguous testimony in depositions taken from one of the former Rose Law Firm partners that the work came via another direction.

Here we have Mr. Latham indicating to you when he would have no reason to be other than truthful to you at the time, that this was Mr. McDougal's deal and don't worry about it. I note that is very compelling, very compelling.

Senator Sarbanes.

Senator SARBANES. I'm just curious, Ms. Hays. Did this reporter just appear at your door with this memo?

Ms. HAYS. He called me first. He is someone I know personally. He was my Sunday school teacher.

Senator SARBANES. He is your Sunday school teacher?

Ms. HAYS. He was at the time, yes.

Senator SARBANES. He called you and said he had this memo and wanted to come talk to you about it?

Ms. HAYS. Yes, sir.

Senator SARBANES. This was in July?

Ms. HAYS. It was June or July of 1995.

Senator SARBANES. This memo was publicly released by the House Committee on August 7th and provided then in a public way to the media, and this was well ahead of that date; is that correct?

Ms. HAYS. As I remember, I think he said the date of the newspaper article was the end of July.

Senator SARBANES. Right.

Ms. HAYS. I was interviewed prior to that, and he brought this memorandum with him.

Senator SARBANES. Thank you very much.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me go to this matter, Ms. Hays, that Mr. Chertoff brought up about your more recent conversation with Mr. Hopkins. The conversation was spurred by the fact that people were now questioning you from the media about these events, as you say, 10 or more years ago.

Ms. HAYS. Not just now, but had been going on for a couple of years.

Mr. BEN-VENISTE. Right. And with respect to the substance of what he was reporting to you, he said to you that, in essence, that he was trying to get some advantage and he had embellished or exaggerated or fabricated some information to try to get some advantage at the time?

Ms. HAYS. I think I sort of said that and he agreed, yes, that's what I was doing. I related to him that's what I told the reporter, and as I told you earlier, now that I'm a lawyer, it seems kind of more apparent to me what he might have been doing at the time. I told Mr. Hopkins that, and he agreed.

Mr. BEN-VENISTE. And that, coupled with the impossibility of the events having occurred in the way that he had described them to you back in 1987, leads you to conclude, as you have testified today, that indeed he was using some trick or artifice to try to get some advantage in his negotiations on behalf of his client.

Ms. HAYS. That's right. I think there could have been a little bit of truth in some of the things he said. Basically I think what you just said is what he was trying to do.

Mr. BEN-VENISTE. OK. Let me see if I can clarify the question of the termination of the Rose retainer. Now testimony received before this Committee from Ron Clark of the Rose Law Firm was that the Rose retainer and the Rose representation was terminated because the Rose Firm wanted to be able to bid on FSLIC work, and in order to do that, the FSLIC had some guidelines which precluded their attorneys from simultaneously representing savings and loans.

So the testimony was that the law firm terminated the relationship with Madison Guaranty Savings & Loan and indeed refunded the balance of the retainers that it had received. I think it had received \$24,000 and had billed out something like \$21,000 up to that point.

It is also my recollection, from the testimony we have received here before, that the determination by the Rose Law Firm to end the relationship was made prior to the time Mr. McDougal left the

savings and loan. Further, we have the benefit of the Pillsbury Madison & Sutro Report, adopted by the FDIC dated February 25, 1996, at page 137 which says, "In any event, apparently the return of the retainer had nothing to do with the removal of Messrs. McDougal and Latham by the FHLBB."

Now does that combination of events refresh your recollection in any way in terms just of the chronology of what occurred?

Ms. HAYS. I have heard all that you have said before, and I don't agree with it. My recollection of it is that Madison asked to have the retainer funds that were at the Rose Firm returned to Madison. I worked at the Rose Firm following Madison, so I have had a checkered and notorious past, but at any rate, I know my recollection differs from theirs. I have talked with Ron Clark about it and others at the firm. My recollection is that Madison asked to have the funds returned.

Mr. BEN-VENISTE. You think that that occurred after McDougal had left?

Ms. HAYS. Yes, sir, after Mr. McDougal left. I had been told prior to that that it was his deal. After he left, I think I took steps to make sure his deal was no longer going to take place.

Mr. BEN-VENISTE. I don't think there is any question in terms of who made the decision to hire the firm. Mr. Latham, and everybody else that I know of who has testified about this, indicated that the ultimate decision about which lawyers to hire was McDougal's and that Mr. McDougal, in fact, made that decision. So, I don't think there is anything in dispute about that. Do you want to bring up the issue of Mr. Epes?

Senator SARBANES. Mr. Chairman, Mr. Epes is here today and he headed ADFA for a considerable period of time; that's correct, isn't it, Mr. Epes?

Mr. EPES. Yes, sir.

Senator SARBANES. Now some of the inquiry next week is going to get into ADFA's bond underwriting, which Mr. Epes, I take it, was involved with as the head of ADFA. Well, he is here, we could go ahead and ask him about it now, or if the Chairman chooses not to, then I certainly think he ought to come back and be with us when we explore that question.

The CHAIRMAN. I don't know if he has been asked to come back, but certainly I think that it would be reasonable to have him when we are undertaking a review of that aspect. I have no problem, no difficulty, and I would hope that, Mr. Epes, you would be available for us if the Minority makes that requests.

Senator SARBANES. Are you available next week?

Mr. EPES. I'm available after—I'm only available for a portion. I have a bond closing on the 30th. I leave town on the 2nd. I would be available on the 1st.

The CHAIRMAN. Why don't we attempt to work that out.

Senator FAIRCLOTH. Mr. Chairman, I had questions on that now.

The CHAIRMAN. I am not going to preclude the Senator from raising a question on that. But before you do I want the record to be clear on something, because I think it is important. I have heard more excuses for the manner in which the Rose Law Firm was retained, and we went through this whole thing very carefully, painstakingly, and it just seems to me that people went out of their way

to almost recreate the manner in which the business went to the Rose Law Firm.

The fact of the matter is that Jim McDougal in his public statements—they have been published many times—indicates quite clearly that the then-Governor asked him to send some business to the Rose Law Firm. I don't see anything wrong in that.

But all of a sudden for people to make this incredible thing where they dig out this short-term partner, Massey. Massey first doesn't believe he brings it in, then he begins to try to say, yes, I did it with Latham. And then we hear the testimony from this witness today, Ms. Hays, who says when she brought up the question of the retainer, Latham said listen, this is McDougal's deal.

I think it is important, very important. I think for whatever reason the people went into this huge subterfuge, for the life of me, I don't understand what would be so terrible if the then-Governor did go and say to his friend, by the way, my wife is working at this law firm, she could use some business.

But what I do find a very troubling aspect is why not tell the truth about it? Why? That's what creates problems. I have to tell you in my judgment, after having heard the witnesses before and then hearing this witness who has no reason other than to say this is what happened, this is what the man said. She didn't make that up. I think a lot of other people stretched. They went to great lengths to stretch to find out ways in which the business came. This fellow, he used to take an accounting course and he went and said to them and that's how the business came. That is total nonsense. I mean, that's just total nonsense. I make that observation. Why deny something that is no big deal? I have seen this repeatedly and that's my observation.

Senator Faircloth.

Senator GRAMS. Mr. Chairman, can I make a comment, quickly?

The CHAIRMAN. Certainly, Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. I just wanted to follow up on that, because listening to the testimony, you know, there's a lot of troubling aspects about it. I just wanted to summarize some of the issues I'm thinking of.

On the issue of the leases, we know the following from the testimony that Mr. Epes did not want the leases in the Madison building. Ms. Herr testifies under oath that, despite Mr. Epes' objections, she was told by Mr. Mallard that the Madison lease would go through because of Governor Clinton's friendship with Jim McDougal.

Mr. Mallard, a friend of Mr. McDougal, however disputes Ms. Herr's testimony. And despite Mr. Epes' appeal to Governor Clinton and his continued complaints about the adequacy of the space, Madison landed, not just one lease agreement but three.

Ms. Hays testifies that Mr. Hopkins told her that money from Madison went to the Governor's campaign in exchange for assurances from the Governor to McDougal that a State agency would lease space from Madison, and again we look back, not only one, but three.

What troubles me is the recurring pattern that we are seeing of favors being exchanged between then-Governor Clinton and Jim McDougal, Bill Clinton holding the key of influence with State agencies and tax dollars, Jim McDougal holding the other keys of campaign contributions and appointments and opportunities for person financial gain.

So today's testimony, Mr. Chairman, is only one more example of this influence pedaling that occurred between the McDougals and then-Governor Clinton. So I just wanted to make those comments and to go along with what you had said about some of the concerns that we have.

The CHAIRMAN. Thank you, Senator.

Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Epes, there's been a lot written about ADFA. The Rose Law Firm did work for ADFA?

Mr. EPES. Yes, sir.

Senator FAIRCLOTH. Who decided to hire the Rose Law Firm?

Mr. EPES. The Rose Law Firm was hired as bond counsel for the Multifamily Housing Bond Program in April 1983 by the Board of Directors at that time. At that point it was the Arkansas Housing Development Agency.

Senator FAIRCLOTH. The Board of Directors decided?

Mr. EPES. Yes, sir. I was employed later that year, so at that point they were already employed.

Senator FAIRCLOTH. Rose was there when you got there?

Mr. EPES. For that one bond program, yes, sir.

Senator FAIRCLOTH. But they continued to do work?

Mr. EPES. They were continuing on that program. I don't recall what other bond issues they served as bond counsel for.

Senator FAIRCLOTH. But they continued to be the attorney for ADFA?

Mr. EPES. Clearly, no, sir, we didn't have a general counsel, first of all. Whenever we did a bond issue we would have a bond counsel. Most of our bond business was done in the single-family housing bond area, and there was another firm that was bond counsel for that program.

Senator FAIRCLOTH. Did you have a deal with the First Lady, Hillary Clinton, or Webb Hubbell when you were at ADFA?

Mr. EPES. No, sir.

Senator FAIRCLOTH. Did not. No one from the Governor's office ever suggested that the Rose Law Firm would be the firm of choice for ADFA?

Mr. EPES. No, sir.

Senator FAIRCLOTH. Not to you?

Mr. EPES. No, sir. In fact, they had done extensive business for the agency from 1978 forward when it was first created.

Senator FAIRCLOTH. Was it any of the board members from ADFA that suggested the hiring of the Rose Law Firm? Do you know whether they ever raised any money for Clinton's campaign or not?

Mr. EPES. I don't know—

Senator FAIRCLOTH. Do you know or have you ever heard that they did?

Mr. EPES. It wouldn't surprise me if they did.

Senator FAIRCLOTH. But——

Mr. EPES. I don't know specifically, I can't tell you.

Senator FAIRCLOTH. Mr. Epes, Dan Lasater's company received 13 bond underwriting contracts from ADFA which netted his company something like \$1,600,000 in fees. It's a pretty small operation. Would you say that that amount of work was very high in comparison to the size of his company?

Mr. EPES. No, sir.

Senator FAIRCLOTH. You would not?

Mr. EPES. In fact, the 13 bond issues you are referring to, Dan Lasater's company was merely a co-manager of those financings. In each of them, there were somewhere in the range of four to six, maybe as many as seven different investment banking firms involved in those transactions. They were not the firm that put the bond deals together. They were not the ones that did the structuring of the bond issues. They were allowed to sell some of the bonds that were involved in those bond issues.

Senator FAIRCLOTH. Who decided whether Lasater's firm should be chosen or not?

Mr. EPES. They were selected in the spring of 1983 for co-manager status.

Senator FAIRCLOTH. By whom?

Mr. EPES. By the Board of Directors of the Arkansas Housing Development Agency.

Senator FAIRCLOTH. Did anybody from the Governor's office ever talk to you about Lasater or Lasater getting work from ADFA?

Mr. EPES. No, sir. When I started there in September 1983——

Senator FAIRCLOTH. He was already on?

Mr. EPES. He was already on, yes, sir.

Senator FAIRCLOTH. We've heard a lot about a man named Larry Nickels. He worked with your firm, with ADFA?

Mr. EPES. I hired him in May 1988 and I fired him in September 1988.

Senator FAIRCLOTH. Would you tell me why?

Mr. EPES. He's a pathological liar.

Senator FAIRCLOTH. That's adequate reason.

[Laughter.]

Do you have any knowledge that any of the profits from ADFA ever came under control of the Governor or the Governor's office?

Mr. EPES. No, sir, they never did. Our funds were held almost——almost all of the funds were held by trustees, each bond issue had a separate trustee that held those funds. We had general funds of the agency that probably represented a very small percentage of all of the funds controlled by the agency.

On an annual basis, we had an audit——our financial statements were audited by nationally recognized auditing firms, and those audits were published. They had to ascertain that these funds were handled according to the way that the bond issues were structured that set that out, and that the funds that we had in our general fund were to have been administered according to State law.

Senator FAIRCLOTH. Mr. Chairman, I have no further questions.

The CHAIRMAN. Senator Sarbanes, if you have——

Senator SARBANES. I just have two observations, Mr. Chairman.

The CHAIRMAN. Sure.

Senator SARBANES. First, I gather from our previous discussion that Mr. Epes will return on the 1st and participate in that panel.

The CHAIRMAN. Yes, we will have that arranged so that we will attempt to make it a relevant day for Mr. Epes to appear, and if that works with his schedule.

Mr. EPES. Yes, I appreciate you accommodating that day for me.

The CHAIRMAN. Sure, absolutely.

Senator, do you have another observation?

Senator SARBANES. I listened to Senator Grams with great care, as I always do, and I simply want to say for the record that I don't think many of the assertions he made in his statement were really supported by the testimony of the witnesses here today. In fact, Ms. Hays, just to be very specific, all that material in the memo, you don't know any of that firsthand. It is based on a report from you of a conversation that you had with Hopkins?

Ms. HAYS. That's correct.

Senator SARBANES. You don't know the truth or falsity of any of that, you just relayed what Hopkins said?

Ms. HAYS. That's correct.

Senator SARBANES. But in the statement that I heard, it was really attributed to you and I don't think that's—

Ms. HAYS. That's not true. This is just a memo that recollects what Greg Hopkins told me.

Senator SARBANES. That's not fair to you.

Senator GRAMS. Mr. Sarbanes—

Senator SARBANES. Also on the award of the contract, Mr. Mallard, I take it certainly a reason you gave was this policy of trying to help upgrade a neighborhood, what Ms. Herr referred to as an unwritten policy of the agency; is that correct?

Mr. MALLARD. Right. It was a policy of the State Building Services to go downtown any time that we could with a lease.

Senator SARBANES. Thank you.

Senator GRAMS. Mr. Chairman, I just wanted to clarify, I did see in my notes here that Ms. Hays testified that Mr. Hopkins told her that the money from Madison went to the Governor's campaign. I didn't say that she had said it.

Senator SARBANES. Then I stand corrected. I listened at the time and I didn't catch the reference to Mr. Hopkins, so if that's the case, I apologize to my colleague. I thought it was being put as her statement and I want to be very clear, it was not her statement.

The CHAIRMAN. Let me—

Senator SARBANES. Of course, we do have the fact that the chronology again a point, and I'm not sure if the Senator was here at the time, that the lease was a year before the fundraiser. The fundraiser was not before the lease, but we'll develop that point in our interpretation.

The CHAIRMAN. We are now doing our summations.

Senator SARBANES. That's right, I agree.

The CHAIRMAN. Which will all appear on June 17th in our report, but I have to make an observation with respect to the witnesses and their testimony. We are deeply appreciative of your appearance and the cooperation you have given.

Mr. Mallard, when you say that you don't remember and then you go even further—and I'll paraphrase your testimony—that it didn't take place, I just have to tell you something. What you have done, I think, in terms of that testimony, is just not acceptable. I mean, it's wrong. It's not right. It's not the right thing.

You put Ms. Herr in a position where you would actually say that she has for some reason created this. I think she's testified to the best of her ability. She has given some testimony that was totally supportive, for example, of the gas station that is still there and is used as a revenue thing. I mean, she's told it the way it is and the way it happened. This is very troubling. For the life of me, I don't understand why. It's not credible, at least to this Senator.

Now somebody else may choose to interpret it in a different way, but I want to tell you something. You ask most reasonable people and you're going to find, I believe, that your testimony as it relates to the fact that you did indicate that, you know, the Governor wanted this in sum and substance to Ms. Herr, she wouldn't try to make that up. She just wouldn't do that. She's testified truthfully, and I want to commend her. It's not easy. All we are trying to do is get the facts here.

Ms. Hays, I want to commend you. I think that you testified in a straightforward way and the best you could. And we appreciate it when people are candid with us. But I just want you to know, Mr. Mallard, that's my observation.

Senator SARBANES. Mr. Chairman, I would like to be heard on that.

The CHAIRMAN. Again, Ms. Herr has no reason to make this up. I'm sure she didn't find it pleasant and I'm sure she didn't relish coming here and putting this out as she had. So I just think that it's a very troubling thing to this Senator to find that first you would say you have no recollection and then you went even one step further and say it didn't happen. That's a terrible thing. It's not right. I just share that.

Go ahead, Senator.

Senator SARBANES. Mr. Chairman, I think the fact that two witnesses have differing recollections ought not then to be escalated into an assertion that one is accusing the other of lying. In fact, Mr. Mallard was pressed very hard by the questioning that came from that side on this issue, and he tried, I thought, to respond as best he could under the circumstances, but I don't think that the fact that he recalls it differently from Ms. Herr represents that he was asserting that she was lying or vice versa, for that matter, and I just think the record ought to show that.

The CHAIRMAN. I just say if one looks at the deposition here, Mike O'Callaghan, he spoke to Ms. Herr, pages 141 to 146, he says:

Question: When you brought the objections from Mr. Epes to Mr. Mallard's attention, you mentioned earlier that again, the sentiment was expressed that the Governor's office wanted to lease that space; is that right?

Answer: Yes.

Question: And there was mention that the McDougals and Clintons were friends; is that right?

Answer: Yes.

Question: And that Mr. Mallard was friends with the McDougals?

Answer: Yes.

Question: OK. And with regard to Mr. Mallard and yours and Mrs. McDougal's meeting, was that a first attempt by Madison to make a bid on getting the leasing contract? Would you say that was the first attempt?

Answer: Yes.

Mr. Mallard, you knew Mrs. McDougal, didn't you?

Mr. MALLARD. I knew Mr. McDougal very well, yes.

The CHAIRMAN. What about Mrs. McDougal?

Mr. MALLARD. I got acquainted with her sometime in 1983.

The CHAIRMAN. She came to see you on this?

Mr. MALLARD. Sure she did, yes.

The CHAIRMAN. I have no further questions. I want to thank the witnesses. We stand in recess until 2:00 p.m. Thanks particularly to Ms. Hays and Ms. Herr. We thank you all.

[Whereupon, at 12:41 p.m., the hearing was recessed, to be reconvened at 2:00 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Could I ask you all to stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. I'll ask all of the witnesses, we'll start with Mr. Peacock and then work on over.

Mr. Peacock, do you have a statement that you would like to give to the Committee before we start? Anything you would like to say?

SWORN TESTIMONY OF CHARLES J. PEACOCK FORMER MEMBER, BOARD OF DIRECTORS MADISON GUARANTY SAVINGS & LOAN

Mr. PEACOCK. Yes, sir. This Committee has messed me up for about 2 months' working. I work as a consultant, and I am a contractor. You folks would call me and say we want you Monday or we want you Tuesday and then Tuesday call up and say we want you Wednesday, and then you call up, no, we're going to put it off until next week. And I really personally think Bill Clinton ought to give you a big hug because you sure helped him out in our country and the country where I travel at, as a working man.

The CHAIRMAN. Thank you very much, Mr. Peacock, for your observation.

Mr. Hopkins.

SWORN TESTIMONY OF GREGORY M. HOPKINS THE HOPKINS LAW FIRM

Mr. HOPKINS. I am here to take the Committee's questions, your Honor.

The CHAIRMAN. Mr. Miller.

SWORN TESTIMONY OF LANCE RANDELL MILLER, PARTNER MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD

Mr. MILLER. No comment.

The CHAIRMAN. Would you like to move over there?

Mr. MILLER. Are you having trouble hearing me?

The CHAIRMAN. Why don't you move your chair over a little more. That's it. So you can—and pull that up in front of you.

Mr. MILLER. What are we trying to accomplish here?

The CHAIRMAN. Mr. Miller, I would like you to just pull the microphone up in front of you so that we can—that's what we are trying to accomplish, that's all.

Mr. MILLER. OK. I was not understanding what you wanted me to do.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Good afternoon, panel.

Mr. Miller, I would like to begin with you, sir, if I might. Now, you're a member of the Mitchell, Williams' law firm in Little Rock; correct?

Mr. MILLER. That's correct, Mitchell, Williams, Selig, Gates & Woodyard.

Mr. GIUFFRA. And you began representing Madison Guaranty in the late 1980's; is that correct?

Mr. MILLER. The firm——

Mr. GIUFFRA. You personally.

Mr. MILLER. I was a member of the firm, so the representation would be the firm's representation, and I would be doing the work. Best I can recall, my involvement started in late 1986.

Mr. GIUFFRA. You were a collection lawyer for Madison Guaranty?

Mr. MILLER. That's correct.

Mr. GIUFFRA. Meaning that you were foreclosing on bad debts and unpaid loans for Madison?

Mr. MILLER. That's correct, foreclosing and repossessing; foreclosing would apply to real estate, repossession of personal property.

Mr. GIUFFRA. Now in late 1986, your primary contact at Madison was someone by the name of Patricia Heritage and now Hays?

Mr. MILLER. That's correct, Pat Hays.

Mr. GIUFFRA. She was a workout officer at Madison Guaranty?

Mr. MILLER. That's correct.

Mr. GIUFFRA. You would agree Ms. Hays has a good reputation for honesty? She's been honest with you in her dealings?

Mr. MILLER. As far as I know, in all my dealings, yes, sir.

Mr. GIUFFRA. She's not someone who would ordinarily make up false allegations?

Mr. MILLER. No, sir, I wouldn't say that.

Mr. GIUFFRA. Do you recall working on a matter for Madison involving the Peacock brothers?

Mr. MILLER. Yes, sir.

Mr. GIUFFRA. If we could put up on the Elmo the document that I have marked as No. 1, which is the April 21, 1987, handwritten conference memo that you prepared. Do you recall preparing this document?

Mr. MILLER. This is my document, yes.

Mr. GIUFFRA. Do you recall preparing it on April 21, 1987?

Mr. MILLER. Yes, I prepared this document on April 21, 1987.

Mr. GIUFFRA. And this is notes of a telephone conference you had with Ms. Heritage; right?

Mr. MILLER. That's correct.

Mr. GIUFFRA. And the time is 2:05 p.m.; correct?

Mr. MILLER. Correct.

Mr. GIUFFRA. Your best recollection is that Ms. Heritage Hays called you; correct?

Mr. MILLER. Yes, to my best recollection, she called me.

Mr. GIUFFRA. She was reporting on a conversation that she had with Mr. Hopkins, who is sitting to your right?

Mr. MILLER. That's what she told me, yes.

Mr. GIUFFRA. He was a lawyer for the Peacock brothers?

Mr. MILLER. I think the official corporate entity was something—was something like I don't remember, Peacock Brothers, Inc. doing business as something. There was an official corporate entity that had filed Chapter 11, yes.

Mr. GIUFFRA. You knew Mr. Hopkins; correct?

Mr. MILLER. That's correct.

Mr. GIUFFRA. You had been litigating with Mr. Hopkins on the bankruptcy court?

Mr. MILLER. On other cases as well as this case, yes.

Mr. GIUFFRA. On April 8th, which would be about 2 weeks before the conversation that Ms. Hays was reporting on, you had obtained the dismissal of Peacock's Chapter 11 proceeding with prejudice?

Mr. MILLER. We had filed—on behalf of Madison, we had filed a motion to dismiss or to convert. My recollection is that the judge gave the debtor the opportunity to either convert to a Chapter 7 or dismiss with prejudice. The debtor as I recall chose to have their Chapter 11 dismissed with prejudice, but yes, it was ultimately dismissed.

Mr. GIUFFRA. Your recollection would be Mr. Hopkins was not happy about the result of what the judge's order had done?

Mr. MILLER. My recollection is he was not happy.

Mr. GIUFFRA. Why would he not have been happy?

Mr. MILLER. He felt like he needed to stay in Chapter 11 for an opportunity to reorganize the debtor and that opportunity had been taken away from him.

Mr. GIUFFRA. You could now go after the debtor's assets; correct?

Mr. MILLER. In State court, correct. There was no automatic stay in place.

Mr. GIUFFRA. Ms. Heritage called you right after she got off the phone with Mr. Hopkins; is that right?

Mr. MILLER. To the best of my recollection, yes, sir.

Mr. GIUFFRA. Did she indicate any state of surprise or shock that Hopkins had called her?

Mr. MILLER. My impression was yeah, she was kind of shocked that he had called her directly.

Mr. GIUFFRA. That was because she was a represented party?

Mr. MILLER. That's correct. She was the client.

Mr. GIUFFRA. And you should typically contact lawyer to lawyer?

Mr. MILLER. That's correct.

Mr. GIUFFRA. Now if we could just turn to your notes which we have up on the screen, I just want to direct your attention to what is in yellow. Let me just read the first thing I have marked in. "Dixie loan went to Clinton campaign, signed lease to State." Do you recall writing that down?

Mr. MILLER. Yes, sir, I did write this down.

Mr. GIUFFRA. What was Ms. Heritage relating to you when she said, "Dixie loan went to Clinton campaign, signed lease to State"?

Mr. MILLER. As reflected in the next document, No. 2, that goes into a little more detail, adds to my recollection of it, but it was an allegation that there was a loan made from Madison to Dixie Continental Leasing and that part of those loan proceeds went to the Clinton campaign and as a result of that campaign contribution, the State had signed a lease from a McDougal or a Madison-related entity.

Mr. GIUFFRA. Mr. Peacock, if I could ask you a quick question, you were the President of Dixie Continental back at that time?

Mr. PEACOCK. Right.

Mr. GIUFFRA. That was your company?

Mr. PEACOCK. That's right.

Mr. GIUFFRA. The next line in the memo, Mr. Miller is, "Alot of people going to prison!!" What was Ms. Hays trying to indicate to you by that statement?

Mr. MILLER. That was a statement Mr. Hopkins allegedly made to Ms. Hays that as a result of the Dixie Continental Leasing transaction and the State corresponding lease, was such a transaction that it would ultimately result in people going to prison.

Mr. GIUFFRA. So it would be this transaction whereby a Dixie loan went to the Clinton campaign in exchange for State leases?

Mr. MILLER. That was the allegation as reported to me, and I wrote it down.

Mr. GIUFFRA. Now below that there's a reference, "Greg going to get out!! Too dirty." What was the reference meaning there?

Mr. MILLER. Again, with the transaction noted above and all of these things, my recollection is the allegations were going to be so outstanding that Greg was stating to Ms. Heritage allegedly that he was not sure if he even wanted to stay in as counsel for the Peacocks, that it may get too dirty and he was considering resigning as the attorney of record.

Mr. GIUFFRA. Now down at the bottom of your notes it says, "McDougal told Peacock that JGT and McDougal would take care of Peacock." What was Ms. Heritage Hays relating by that statement to you?

Mr. MILLER. That was about the fifth or sixth excuse or reason why that maybe Madison should back off in this foreclosure proceeding, is my perception of the allegations being made, but that was simply a statement Mr. Hopkins allegedly made to Ms. Hays, was that Peacock was saying that JGT stands for Jim Guy Tucker.

Mr. GIUFFRA. And he was your partner at the law firm; correct?

Mr. MILLER. He was a partner and I was an associate; but yes, we were members of the same firm, that there somewhere was alleged to be a promise that Jim Guy and McDougal would take care of Peacock. That was simply the statement made and I wrote it down.

Mr. GIUFFRA. After this conversation with Ms. Hays, you went and spoke to Jim Guy Tucker at the firm?

Mr. MILLER. There was an intervening discussion with another member of my firm by the name of Tim Grooms, then Mr. Grooms and I went and discussed these allegations with Mr. Tucker, is that correct.

Mr. GIUFFRA. Now in April 1987, were you aware that Jim Guy Tucker was a friend of Mr. McDougal?

Mr. MILLER. I was not then and am not today.

Mr. GIUFFRA. At the suggestion of Mr. Tucker, did you draft a memo to John Selig?

Mr. MILLER. John Selig, yes, sir.

Mr. GIUFFRA. He was another senior partner at your firm?

Mr. MILLER. That's correct.

Mr. GIUFFRA. And that memo, which we will turn to, document No. 2 in your packet, that's dated April 23, 1987. Do you recall when you dictated this memo or prepared the memo?

Mr. MILLER. It's my recollection that I would have dictated this memo on the 21st contemporaneous with the phone call, immediately following the phone call and my meeting with Jim Guy. It would have taken my secretary some time to type it, get it back to me in draft form. I would have made any revisions and then it

would have been finalized on April 23rd, so it all occurred the 21st, 22nd and 23rd.

Mr. GIUFFRA. Why did Mr. Tucker want you to write this memo to Mr. Selig?

Mr. MILLER. As stated in the memo, he said if there's any doubt, if somebody is making allegations, put it down in writing and pass it on to John Selig.

Mr. GIUFFRA. Now this memo is an accurate transcription of what Ms. Hays told you on the 21st; correct?

Mr. MILLER. To the best of my knowledge and recollection, yes, the actual phone minutes are my abbreviated version of what was said. The memo puts a little more meat on that skeleton and fleshes out what we talked about, yes, sir.

Mr. GIUFFRA. And you viewed yourself in preparing this memo as acting as sort of a stenographer?

Mr. MILLER. That's correct.

Mr. GIUFFRA. Let's turn to what is actually listed as page 3 of the memo but is in actuality page 2 of the memo, the next page. If I could direct your attention to the second full paragraph, and I'll just read it into the record and then we'll discuss it.

Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock.

Did you consider this to be a serious allegation?

Mr. MILLER. I don't know how you would define "serious," but yes, it was serious enough that I felt it needed to be addressed.

Mr. GIUFFRA. Did Mr. Tucker ask you to tell anyone outside of the law firm of Hopkins' allegations via Ms. Heritage Hays?

Mr. MILLER. No, as stated in the memo, he asked me to prepare this to John Selig.

Mr. GIUFFRA. Do you know whether Mr. Tucker took any steps to investigate Mr. Hopkins' allegations?

Mr. MILLER. No, sir.

Mr. GIUFFRA. Do you know whether anyone else at your firm took any steps to investigate Mr. Hopkins' allegations?

Mr. MILLER. No, sir.

Mr. GIUFFRA. Did you contact Mr. Hopkins and ask him about the allegations?

Mr. MILLER. No, sir.

Mr. GIUFFRA. Mr. Hopkins, if I could put some questions to you, sir, you're a specialist in bankruptcy law?

Mr. HOPKINS. Among other things, yes, sir.

Mr. GIUFFRA. Bankruptcy litigation.

Mr. HOPKINS. Yes, sir.

Mr. GIUFFRA. During the 1980's, you represented Mr. Peacock on a number of matters?

Mr. HOPKINS. Yes, along with certain of his related entities.

Mr. GIUFFRA. And back in—

The CHAIRMAN. That moves. You can actually pull it right up.

Mr. HOPKINS. Is that better?

The CHAIRMAN. Yes.

Mr. GIUFFRA. Back in 1987, Madison Guaranty sued Mr. Peacock and various entities that he owned or controlled with regard to the

nonpayment of certain loans that those entities and Mr. Peacock had taken out?

Mr. HOPKINS. That's my recollection.

Mr. GIUFFRA. You know Ms. Pat Heritage Hays; right?

Mr. HOPKINS. Yes.

Mr. GIUFFRA. You consider her to be a truthful person?

Mr. HOPKINS. Yes.

Mr. GIUFFRA. No reason that she would make up a conversation that she would have with you?

Mr. HOPKINS. No.

Mr. GIUFFRA. You know Mr. Miller; correct?

Mr. HOPKINS. Yes.

Mr. GIUFFRA. You believe him to be a truthful person as well?

Mr. HOPKINS. Oh, sure.

Mr. GIUFFRA. Now let's put up, which is on the screen actually, look at the memo that Mr. Miller prepared. Now, you've reviewed this memo before?

Mr. HOPKINS. The first time I saw this memo——

Mr. GIUFFRA. The April 23 memo.

Mr. HOPKINS. Document 2 in the packet, Counsel?

Mr. GIUFFRA. Correct.

Mr. HOPKINS. The first time I saw the memo was when my deposition was taken by the Counsel for this Committee, oh, a month or two ago.

Mr. GIUFFRA. In your deposition you testified that you had, "No specific recollection of a conversation with Ms. Heritage Hays"?

Mr. HOPKINS. That's correct.

Mr. GIUFFRA. And as you sit here today, do you have any sort of recollection of the conversation, general, specific?

Mr. HOPKINS. No. And after being here this morning, I must say that my recollection of that is even fuzzier because I heard—I did happen to hear part of Ms. Hays' testimony this morning. She testified there was a face-to-face meeting. This afternoon I hear that there was—my conversation with her was by telephone. I don't know whether there was a meeting, a telephone call, a conversation or not. I have no specific recollection and nothing has helped clear that up since my deposition.

Mr. GIUFFRA. Do you have a general recollection, a vague recollection?

Mr. HOPKINS. No.

Mr. GIUFFRA. Would you be surprised if you had this conversation with Ms. Heritage Hays?

Mr. HOPKINS. This conversation, I probably would. Would I be surprised that I had a conversation about this subject matter, probably not.

Mr. GIUFFRA. Do you recall testifying at your deposition at page 113 that you wouldn't—about 51 percent probability that you had the conversation?

Mr. HOPKINS. I have not seen my deposition, but that's probably a fair statement.

Mr. GIUFFRA. So more likely than not, you had the conversation?

Mr. HOPKINS. I had a conversation. Whether it was this specific conversation with these statements, I couldn't tell you. I would say probably not. Whether I had a conversation, I would say probably.

Mr. GIUFFRA. Let me direct your attention to July and August of 1995, so that's less than a year ago. Did you ever speak with someone by the name of Bill Simmons of Associated Press?

Mr. HOPKINS. Other than to tell him to remove himself from my premises and to quit calling my office, no.

Mr. GIUFFRA. Now at about the same time period, did you ever speak with Ms. Heritage Hays?

Mr. HOPKINS. About anything or——

Mr. GIUFFRA. About anything. Do you recall running into Ms. Heritage Hays at a restaurant where you both were having lunch?

Mr. HOPKINS. Sometime within the last year I do.

Mr. GIUFFRA. Did you ever discuss anything having to do with the subject matters that you are here today about with Ms. Heritage Hays during that lunch meeting? It wasn't a meeting, but you both were having lunch in the same establishment.

Mr. HOPKINS. As I recall, the only time I have seen Pat in the last year was in one of the restaurants near the downtown area, a fairly popular lunch place.

Mr. GIUFFRA. Do you recall the name of it?

Mr. HOPKINS. If my memory is correct I think it was the Dixie Cafe. I am not positive, but it was one of the ones on the restaurant row area.

Mr. GIUFFRA. What happened when you met with Ms. Hays?

Mr. HOPKINS. It was maybe one of these 15-second conversations you have where you run into someone you know that shares a common burden. This was sometime after the article came out. I remember perhaps——

Mr. GIUFFRA. This would be the AP article?

Mr. HOPKINS. Yes. "Jeez, the reporters are at it again. I wish they would leave us alone. I don't talk to them." That was about it. Maybe some vague recollection that she says, "Jeez, I hope I didn't say anything to cause you any problems." I remember saying to her, much as we conversed after the break this morning, that don't worry about this. It's no big deal. It's no big deal. And that was about the whole substance of the conversation.

Mr. GIUFFRA. Did you read the AP article?

Mr. HOPKINS. Yes.

Mr. GIUFFRA. Do you recall in the AP article the fact that it said that you had a conversation with Ms. Hays?

Mr. HOPKINS. Yes.

Mr. GIUFFRA. Did you discuss with Ms. Hays in any way the fact that the AP article said that you and Ms. Hays had had a conversation?

Mr. HOPKINS. Not that I recall. I mean, like I say, it was one of these passing-in-the-day conversations occurring while one of us was waiting to pay, the other one was in line.

Mr. GIUFFRA. That's a pretty critical fact, whether you had a conversation with Ms. Hays or you didn't. I mean, that was what the article was about, this particular conversation. Did you and Ms. Hays, when you met with her within the last year, discuss whether or not the conversation did or didn't occur?

Mr. HOPKINS. No, not that I recall.

Mr. GIUFFRA. So your testimony is that during the conversation with Ms. Hays while you were having lunch, there was no conver-

sation about the fact that you had had this conversation back in 1987? Is that your testimony?

Mr. HOPKINS. That's my recollection, yes, sir.

Mr. GIUFFRA. Now this morning, Ms. Hays said that she had this conversation with you at the Dixie Cafe and that during this conversation at the Dixie Cafe, you indicated to her that yes, the conversation had occurred back in 1987, so you still believe that you didn't have this conversation back in 1995?

Mr. HOPKINS. I stand by what I said. It was too short a conversation. Maybe she assumed from my statements to her that it was no big deal, don't worry about it, that I meant more by that than what I meant by it, but it was a very short conversation. I mean, Mr. Fox, my counsel here, was along with me for lunch. It was the kind of thing you would have when you run into someone in the hall, run into someone out like that. I don't recall it being an extended discussion, oh jeez, I said so-and-so, and now I remember it and—no.

Mr. GIUFFRA. Was there any discussion of the fact that according to the AP story, you had had a conversation back in 1987 with Ms. Heritage Hays?

Mr. HOPKINS. No, sir, not that I recall.

Mr. GIUFFRA. Let me direct your attention to page 2 of the April 23, 1987 memo.

Mr. HOPKINS. Is this the page that's numbered 3 but actually—

Mr. GIUFFRA. Yes, but it's actually page 2. You've read the whole memo; correct?

Mr. HOPKINS. Yes.

Mr. GIUFFRA. Let me just direct your attention to the sentence:

Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock.

Now, you would agree that that would be a serious allegation, correct, the allegation that's attributed to you in this memo prepared by Mr. Miller? It would be a serious allegation to assert that the Governor agreed to lease office space to a particular individual in exchange for a campaign contribution?

Mr. HOPKINS. I guess I would have a problem with the term "serious." Yes, it is a substantial allegation if you will permit—

Mr. GIUFFRA. It's not the kind of statement that someone would make up; correct?

Mr. HOPKINS. I'm sorry?

Mr. GIUFFRA. It's not the kind of statement that someone would make up, that Ms. Hays would make up?

Mr. HOPKINS. I can't answer that for her. It would be speculation on my part.

Mr. GIUFFRA. Based on your experience with Ms. Hays, it's not the kind of statement that Ms. Hays would make up?

Mr. HOPKINS. Once again, that would be speculation on my part. It is the kind of thing that I would expect someone to treat with the proper amount of deference.

The CHAIRMAN. Mr. Hopkins, Ms. Hays says that you made this statement to her. Did you make the statement to her?

Mr. HOPKINS. Mr. Chairman, I have no specific recollection on that issue. That does not sound like the way I would phrase my words.

The CHAIRMAN. Were you aware of the loan?

Mr. HOPKINS. I'm sorry, the Dixie Continental loan?

The CHAIRMAN. Yes.

Mr. HOPKINS. Probably through conversations with my client at that point in time.

The CHAIRMAN. Were you aware of the contributions that your client had made?

Mr. HOPKINS. Could I have just one moment here?

The CHAIRMAN. Certainly.

Mr. HOPKINS. My problem here is this—anything I know about any of these allegations for the most part would have come and probably exclusively at this point in time would have come from Mr. Peacock. There is a question as to attorney-client privilege and without—

The CHAIRMAN. Mr. Hopkins, I'm not asking you to reveal attorney-client privilege. You have here Ms. Hays who says that you called her. You waived any privilege as it relates to a conversation that you have with another party who is not a lawyer when you say look, there was this loan made, there were leases that were made as a result of this, there were campaign contributions, and this is going to be big trouble.

You have read this memo. This memo you heard about the first time last year, you run into this woman and you say don't worry about it, et cetera. How was it that you were in the position to tell her about this, about the contributions? Did you learn that the contribution back in the 1980's was made? This conversation with her took place sometime in 1987? This memo was in 1987. So were you aware that a contribution by Mr. Peacock had been made?

Mr. HOPKINS. Senator, if I was aware of that fact, it was because Mr. Peacock told me.

The CHAIRMAN. OK.

Mr. HOPKINS. It's not the kind of thing I would have made up out of thin air.

The CHAIRMAN. Let me say this to you. You did have a conversation basically as it related to this entire situation that you were annoyed about and that your client was angered about; is that true?

Mr. HOPKINS. I cannot say that is true. I cannot say that it is not true. I have no specific recollection that we had a conversation where we discussed these issues or that I said this. It could have happened a different way.

The CHAIRMAN. Well, I am not going to follow that premise in terms of a different way. "Dixie loan went to Clinton campaign, signed lease to State, alot of people going to prison!! Whole deal was just to get billing out!!" Did you talk about this? I mean, did she just make this up?

Mr. HOPKINS. Senator, I cannot tell you for sure. All I can tell you is that—

The CHAIRMAN. When you say you can't tell me for sure, do you mean that you have a general recollection of a conversation about this with—what's that young lady's name?

Mr. HOPKINS. Ms. Heritage Hays.

The CHAIRMAN. At the time, did you have a general conversation with Ms. Heritage Hays about this?

Mr. HOPKINS. I guess what gives me the problem, is that I do not recall a conversation that occurred as I have answered to Counsel. You know, there is a possibility, maybe even a probability that there was a conversation, whether it was telephonic or in person, and how things were talked about, I don't know. I don't know whether these were things that we were going to investigate in the litigation or not.

The CHAIRMAN. It says, "Mr. Hopkins informed Ms. Heritage that one of the loans made by Madison to Dixie Continental Leasing," and you were representing them now in this litigation; right? Dixie?

Mr. HOPKINS. That's my recollection, sir.

The CHAIRMAN. "Upon which Marcy Taylor had undertaken foreclosure proceedings, also involved fraudulent transactions. Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign." Now if you made that statement, that is not a statement that you would forget very easily, is it? That's a rather serious statement, isn't it?

Mr. HOPKINS. In the type of practice—well, yes, sir, it is. I don't mean to avoid your questions. It is a serious allegation.

The CHAIRMAN. So isn't it the kind of thing you would recall?

Mr. HOPKINS. In the type of practice I deal with, these type allegations and actually these type situations appear more often than you might presume. There are many types of fraud or many types of wrongdoing that can—

The CHAIRMAN. Did you hear when Ms. Heritage testified today?

Mr. HOPKINS. I heard portions of it.

The CHAIRMAN. Have you ever gone over any of her testimony, any of her depositions, have you been shown any?

Mr. HOPKINS. No, sir.

The CHAIRMAN. Have you been told about what she's said?

Mr. HOPKINS. No, sir.

The CHAIRMAN. Would you get out those depositions so that you could share with Mr. Hopkins, please, what she has said as it relates to this conversation. I have to tell you, you see, here you have someone who eventually becomes a lawyer, Ms. Heritage, and was somewhat taken aback by the manner in which—because you were obviously disturbed on behalf of your client, make these statements to the effect that people are going to go to jail. She relates this to Mr. Miller and Mr. Miller relates this to his senior partner. They think it is sufficiently important that he then transcribes his notes in which he has related this from Ms. Heritage to a fuller memorandum. I have to tell you, this is not the everyday kind of situation. You're talking about an allegation as it relates to the then-Governor of the State which you made—I have no doubt that you made it—to this young woman who is representing Madison Bank.

Mr. GIUFFRA. Mr. Hopkins, in representing clients, you obviously try to stay within the bounds of the Canon of Ethics; right?

Mr. HOPKINS. Yes, sir.

Mr. GIUFFRA. You are aware of the Canon of Ethics which says that you can't make a knowingly false statement to advance your client's interest; right?

Mr. HOPKINS. Yes, sir.

Mr. GIUFFRA. Mr. Peacock, let me ask you several questions, specifically about this particular incident. Have you ever said anything to anyone about a portion of loan proceeds that you received or Dixie Continental received going to a Clinton campaign?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. Are you certain that you have never said that to anyone?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. So you don't know one way or the other; right?

Mr. PEACOCK. I said I have not said that to anyone right there.

Mr. GIUFFRA. You're 100 percent sure that you've never said it?

Mr. PEACOCK. I'm 100 percent sure.

Mr. GIUFFRA. You're certain you never said anything to Mr. Hopkins about loan proceeds going to the Clinton campaign?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. You mean you did or you didn't?

Mr. PEACOCK. I didn't say anything to him.

Mr. GIUFFRA. Now do you have any knowledge about Mr. Clinton assuring Mr. McDougal that a State agency would lease Madison space from him?

Mr. PEACOCK. No, sir, I wasn't privy to that kind of information. I worked on the job out there, clearing up Maple Creek and the other jobs, running dozers and doing that type of work.

Mr. GIUFFRA. Did you do any renovation work on the Madison building?

Mr. PEACOCK. I did.

Mr. GIUFFRA. That's the main office that Madison Guaranty had.

Mr. PEACOCK. No, I did not work on that one.

Mr. GIUFFRA. Which building did you work on?

Mr. PEACOCK. I worked on one down at the corner of the street there that they call the old whorehouse. It was a Senate residential area back in the 1940's or something like that, and they had made it into an apartment complex.

Mr. GIUFFRA. You have known Mr. McDougal for about 15 to 20 years?

Mr. PEACOCK. Yes, sir.

Mr. GIUFFRA. You were a Director of Madison?

Mr. PEACOCK. Yes, sir.

Mr. GIUFFRA. And you were involved in land development with Mr. McDougal; correct?

Mr. PEACOCK. Right.

Mr. GIUFFRA. Did you ever work on the Castle Grande project?

Mr. PEACOCK. Sir?

Mr. GIUFFRA. The Castle Grande project, did you ever do any work on that project?

Mr. PEACOCK. Yes, sir.

Mr. GIUFFRA. Did you know that project as Castle Grande?

Mr. PEACOCK. Did I know it as Castle Grande? Yes, sir.

Mr. GIUFFRA. That was the name of the project?

Mr. PEACOCK. Right.

Mr. GIUFFRA. Was it called IDC as far as you knew?

Mr. PEACOCK. No.

Mr. GIUFFRA. Do you recall the dismissal of your Chapter 11 bankruptcy proceeding in April 1987?

Mr. PEACOCK. Do I recall what?

Mr. GIUFFRA. Do you recall the dismissal of that proceeding?

Mr. PEACOCK. No, sir. This bankruptcy you are referring to was my son's business, not mine.

Mr. GIUFFRA. Do you recall that happening?

Mr. PEACOCK. Do I recall what?

Mr. GIUFFRA. The dismissal of the proceeding.

Mr. PEACOCK. I don't remember.

Mr. GIUFFRA. This is a good place to stop.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Let's start, if we would, with the central issue here, which is Mr. Hopkins, do you have any knowledge from any source that there was an understanding with respect to a campaign contribution made by Mr. Peacock in 1985, and that as a result of that, there would be deference paid or leases entered into between the State of Arkansas and Madison Savings & Loan or any entity associated with it?

Mr. HOPKINS. Counsel, as we sit here today, I recall nothing, no evidence or anything that I have had access to on that.

Mr. BEN-VENISTE. All right.

Mr. HOPKINS. At this point.

Mr. BEN-VENISTE. I do not know that anybody has asked this question, but it would seem to be the relevant question, and that is whether there's any basis behind what has appeared here or been leaked previously as a memo reflecting a conversation between you and the representative of the Madison Bank in 1987. OK? So the question is, in 1987 or up until this moment, do you have any evidence to suggest that there was a deal entered into between a fundraiser held in 1985 and the awarding of any lease contract to Madison Guaranty Savings & Loan?

Mr. HOPKINS. Counsel, at this point based on what I have seen, the general memory I do have, I would have to say that at the time this litigation was ongoing, and based on what Ms. Heritage said, I probably had suspicions, and my statements to her which she may have heard as assertions of fact were probably made that this litigation is newly filed, we will be investigating all of these things and if we can prove these things, they are very serious allegations. At that point, that may give Mr. Peacock a defense.

Mr. BEN-VENISTE. Well, now I think we are getting somewhere, Mr. Hopkins. In fact, it was your intention not to let things rest where they rested after your Chapter 11 proceeding was dismissed with prejudice; is that correct?

Mr. HOPKINS. Basically, but could I correct one thing? The Chapter 11 really was a very small part of this. It involved a corporate party, and that bankruptcy had no effect on the other litigation that was ongoing. Its stay action didn't stay.

The thing that as I recall had gurgled this thing to the top was the other litigation that had been recently filed, but your statement is correct. We were in the initial discussion stages, and my assump-

tion is these statements were made more in you may want to be prepared to answer these questions in discovery because we have some reason for these suspicions. I can assume that's the way it happened because that would be more consistent with the way I handle cases than just making these serious statements.

Mr. BEN-VENISTE. Mr. Hopkins, you did not view the dismissal of your Chapter 11 proceeding as a positive development in your representation of the Peacock interests; correct?

Mr. HOPKINS. That's correct.

Mr. BEN-VENISTE. And you were upset because there were statements or allegations made in the course of the bankruptcy proceeding that were personal to you and you didn't like them; correct?

Mr. HOPKINS. I don't remember specifically what the friction was there but—

Mr. BEN-VENISTE. Wasn't there some friction over your legal fees as to whether they had been paid shortly before the filing of the Chapter 11?

Mr. HOPKINS. I don't remember one way or another. All I do remember is that there was friction ongoing at that point.

Mr. BEN-VENISTE. There was a lot of friction, and you regarded the proceeding as getting very dirty, didn't you?

Mr. HOPKINS. Yes, sir.

Mr. BEN-VENISTE. And you were thinking about withdrawing from it because of the friction involved in the proceeding; correct?

Mr. HOPKINS. I don't specifically remember that. That would be consistent with what was ongoing at the time, my general memory of what was ongoing.

Mr. BEN-VENISTE. So it is consistent with your general memory that you had suffered a reversal in the sense of the bankruptcy being dismissed, that allegations had been made of a personal nature, that you took issue and umbrage with those allegations, that you thought the proceeding was getting very dirty.

And now what you're telling us is you approached the opposing party and you said look, things are getting very dirty, I may get out of this myself, but you ought to back up, take a deep breath because we're not finished yet, there's some things you ought to know about, and you began to weave out this possible scenario that may have had some basis in truth but certainly did not support an allegation of a quid pro quo. Isn't that so?

Mr. HOPKINS. My specific recollection of what happened at that time is not clear. It has been 9 years, but that is generally consistent with my recollection of what was ongoing at the time.

Mr. BEN-VENISTE. You knew that there had been a fundraiser in the bank at some point?

Mr. HOPKINS. I had heard that from someone.

Mr. BEN-VENISTE. You knew that Madison was now the headquarters of the housing authority, as of 1987?

Mr. HOPKINS. I don't know whether I knew that or not.

Mr. BEN-VENISTE. Well, did you not know that Madison space had been leased out to a State agency, whether you knew which agency it was?

Mr. HOPKINS. That is probably a more correct statement. The specific agency I may or may not have known.

Mr. BEN-VENISTE. Now the statement that is reflected in the memo prepared by Mr. Miller following his conversation with Ms. Heritage was that you stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial contribution, Bill Clinton assured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock. That's the statement that has been recorded.

You knew there had been a fundraiser, you knew that a State agency was in the headquarters on Main Street, and in making an allegation where you wanted to put the other side on the defensive, you put those two facts together and made an allegation, according to what Ms. Heritage told Mr. Miller, that there was some kind of a quid pro quo, but the fact is you had no such evidence of any quid pro quo, isn't that so?

Mr. HOPKINS. As we sit here today, I think that's a fair statement of the situation.

Mr. BEN-VENISTE. There could not have been any quid pro quo because we know as we sit here now, having investigated this matter, that the fundraiser in question happened a year after Madison Guaranty Savings & Loan was leased out to the housing authority.

Now when you say, Mr. Hopkins, that in this type of litigation there are these type of allegations made on a more frequent basis than we would expect, are you suggesting that each side exaggerates their position in order to try to get some tactical advantage?

Mr. HOPKINS. I guess I take issue with the term "exaggerate." I think a more appropriate term would be that each side rattles their saber and says we will investigate all of these allegations, and in the course of preparation for trial, many allegations and many theories turn out to be dead ends, to do your job properly as a commercial trial lawyer, you have to run down 10 ends, all of which may be dead, and this is—

Mr. BEN-VENISTE. But before you run down those dead ends, what you do is rattle your saber or posture or take a position where you claim to know information that in fact you may hope to develop but certainly have no basis for swearing to. Is that fair to say?

Mr. HOPKINS. I don't even think you have to get to the point that you claim to know information, but rather you are going to be seeking information on a topic. And a lot of times when you say that, the other side, for whatever reason, may assume that that evidence will come to light.

Mr. BEN-VENISTE. Let me ask, Mr. Peacock, whether you have testified prior to today consistently with the position you have taken before this Committee in depositions that you had no knowledge of any quid pro quo between the fundraiser of 1985 and any lease commitments made by the State?

Mr. PEACOCK. I made no case of that. That fundraiser, my contribution was for a selfish reason right there.

Mr. BEN-VENISTE. What was your selfish reason?

Mr. PEACOCK. All right. My manager, Dene Landrum, was interested in helping a lady that he knew who had some children that wanted to get in line for some scholarships, and I believe our Governor in Arkansas, regardless of who he is, has about 16 or 18 that he can give away, if the people have the right scholastics.

The other position I take is I made a \$3,000 contribution in my son's name, he was in law school. And I felt that, after I talked to Maurice Smith, that there would be no one in the State of Arkansas that could help a young man out of law school any better than a Governor could.

Usually when I make a contribution to a Governor or Senator or anyone else right there, and I have done it all my life to a point, or helped fry fish or whatever, you expect a little something back somewhere.

I talked to the State Highway Commissioner—and incidentally right now, I'm not going to say that this is the reason, but we do have a four-lane highway running right by the farm, right there, that probably very likely may have not been for another 10 years; it was in the program, but I felt like it may have possibly got stepped up a little bit. But it certainly wasn't a deal to get anything out of Clinton personally.

Mr. BEN-VENISTE. Have you testified to this before the Independent Counsel?

Mr. PEACOCK. Yes, I have.

Mr. BEN-VENISTE. Did you testify under a grant of immunity?

Mr. PEACOCK. The question, sir?

Mr. BEN-VENISTE. Did you testify under a grant of immunity or did you testify without immunity? Mr. Peacock, do you know what immunity is?

Mr. PEACOCK. Well, sir, I am not an attorney. I am just a dumb farmer. But—

Mr. BEN-VENISTE. Immunity might be a very good thing to have under circumstances like this, but you have no recollection of testifying under immunity?

Mr. PEACOCK. I do not.

Mr. BEN-VENISTE. Well, you have not been prosecuted, as I understand it?

Mr. PEACOCK. I have not.

Mr. BEN-VENISTE. Either for any violation of the laws concerning bribery or of perjury as I understand it; is that correct?

Mr. PEACOCK. I have not.

Mr. BEN-VENISTE. Have you been advised that you are to be prosecuted?

Mr. PEACOCK. I have not.

Mr. BEN-VENISTE. Now with respect to the allegations or the statements that are made in your memo, Mr. Miller, I would like to clarify one thing which went by pretty fast when Mr. Giuffra was questioning you. And that is with respect to the statement on the first page of the memorandum that said, "Mr. Hopkins went on to explain that there was substantial wrongdoing regarding the prior administration of Madison, that several people were 'going to go to prison.'" Do you see where I am there?

Mr. MILLER. Yes, sir.

Mr. BEN-VENISTE. And with respect to Ms. Heritage Hays' interpretation of that part of the conversation that she had with Mr. Hopkins, she said that the reference to people going to jail had to do—and I quote from page 109 of her deposition testimony of February 23rd of this year, in response to the question of:

Question: Could you be precise as to which people you thought Mr. Hopkins was referring to?

Answer: Jim McDougal, Susan McDougal, one or more of the Henley brothers, John Latham. That's essentially it.

Question: Those people were Madison insiders?

Answer: Yes.

Question: You didn't believe that she was referring to Mr.—to Governor Clinton, did you?

Answer: No, not at all.

Now did you have any reason to believe that in transmitting this information to you, that Ms. Heritage was suggesting at this part of the conversation that anyone other than the Madison insiders were, according to Mr. Hopkins, going to get into serious difficulty and go to prison?

Mr. MILLER. That's correct. The only understanding I had would have been the Madison administration. No reference to Mr. Clinton whatsoever.

Mr. BEN-VENISTE. And indeed, subsequent to this memorandum of April 23, 1987, Mr. McDougal, Mrs. McDougal, and one of the Henleys—do you recall who? One of the Henleys was prosecuted; that is Mr. McDougal's brother-in-law, I believe. Or both of them were? Both of them were. So was that essentially the group that was being discussed for mismanaging and worse in connection with Madison?

Mr. MILLER. My recollection, and it is based upon my phone records and this memo, was that all Pat said to me was a lot of people are going to go to prison. She did not identify any individuals that may have been referred to.

Mr. BEN-VENISTE. Would you accept her interpretation of that as I have read it to you from her deposition?

Mr. MILLER. Yes, sir. I would have no reason to disagree with her interpretation.

Mr. BEN-VENISTE. Let me ask you a question, Mr. Peacock. You were asked about whether you did some work for Castle Grande. Castle Grande that you did work for was a trailer park, was it not?

Mr. PEACOCK. This was where we were putting in double-wides, and my job there was to clear the property to put the double-wides in and build the roads into them from the highway.

Mr. BEN-VENISTE. So the double-wide you're referring to is some sort of a dwelling?

Mr. PEACOCK. These were manufactured homes that come in and they're usually in two pieces.

Mr. BEN-VENISTE. And that was the portion of this property that you knew as Castle Grande, this development of the double-wide trailer homes?

Mr. PEACOCK. That's correct.

Mr. BEN-VENISTE. Thank you.

We'll cede back the time remaining.

Mr. CHERTOFF. Mr. Hopkins, you were asked a series of questions which I didn't quite understand the answer to, to be perfectly frank with you, having to do with your conversation with Ms. Heritage, as she was then known, or with Ms. Hays.

Now there is unmistakable recorded evidence, recorded by Mr. Miller, testified to by Ms. Hays, that you said to her in 1987 that a portion of the loan proceeds made to Dixie Continental Leasing

went to Bill Clinton's campaign. It does not say in the notes and she does not say that you speculated about wanting to investigate whether it did or that you raised a question about it. She testified right here today that your conversation with her was that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign. Did you say it?

Mr. HOPKINS. I—once again, I don't recall the conversation.

Mr. CHERTOFF. Are you prepared to deny her version of the conversation?

Mr. HOPKINS. No, I cannot deny it since I do not remember it. I'm sorry.

Mr. CHERTOFF. So on the state of the evidence that we have here, you have no memory, you're not prepared to dispute her version, and her version isn't about "I want to investigate claims or I have questions I might want to do discovery about." Her version, which is unrefuted at this point, uncontradicted, her version is that you made a specific allegation about a diversion of a portion of that loan to a campaign. Now was it your habit to lie to people when you had business dealings with them?

Mr. HOPKINS. No, sir.

Mr. CHERTOFF. Was it your habit to make up stories or fabricate allegations when you were dealing with people?

Mr. HOPKINS. No, sir.

Mr. CHERTOFF. Now, you understand that the allegation about diverting a portion of the loan proceeds was an allegation about a potential crime; right?

Mr. HOPKINS. Probably so. My area is not criminal law, so if—

Mr. CHERTOFF. You're a lawyer; right?

Mr. HOPKINS. Yes, sir, I am.

Mr. CHERTOFF. You understand it's a crime to take loan proceeds you're given for one purpose and secretly use it for something else; right? That's very easy, isn't it?

Mr. HOPKINS. In most cases, yes, sir.

Mr. CHERTOFF. Is it your habit to make up allegations about people, particularly when your own client was the subject of the allegation?

Mr. HOPKINS. No, sir.

Mr. CHERTOFF. Then it goes on to say, and again it's not something that you want to investigate or you want to raise questions about, but her testimony, corroborated by the memo that was written within a week of this conversation, is that, "In return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock." Did you say that?

Mr. HOPKINS. I cannot say that I said that.

Mr. CHERTOFF. Are you in a position to deny her sworn testimony?

Mr. HOPKINS. No, no, sir. Once again, Counsel, I have no specific recollection. I've given you my idea of how the conversation went.

Mr. CHERTOFF. So her version, her testimony of this conversation you had with her is uncontradicted because you're not willing to go on record now and contradict it.

And by the way, since we got on the issue of chronology, you understand from sitting here today that there was a second lease that

was entered into within a matter of days after that April 1985 fundraiser?

Mr. HOPKINS. Is that the additional space, Counsel?

Mr. CHERTOFF. That's right. That is a separate second lease. You heard about it?

Mr. HOPKINS. Today, I heard about it.

Mr. CHERTOFF. And that's totally consistent with this version of events.

Now let me ask you, you understand, by the way, that an allegation that the Governor promised McDougal something in return for a contribution is a very serious allegation?

Mr. HOPKINS. Yes, sir, I do.

Mr. CHERTOFF. You understand that for a public official to take money in return for a promise to award a contract or a lease would be a criminal act; right?

Mr. HOPKINS. Yes, sir.

Mr. CHERTOFF. Is that an allegation you would make lightly in a conversation with an outsider?

Mr. HOPKINS. No. I wouldn't, no.

Mr. CHERTOFF. In the context of what you have described as exaggerating and posturing in litigation, is it your custom to make allegations about public officials doing acts that would be illegal?

Mr. HOPKINS. I'm sorry, would you repeat the question? I think I lost you somewhere.

Mr. CHERTOFF. In what you have described as kind of the ordinary routine business of a lawyer puffing and exaggerating in litigation, is it your practice in the course of conducting litigation to make unfounded allegations about public officials doing illegal things?

Mr. HOPKINS. No, sir.

Mr. CHERTOFF. I mean, what conceivable reason would you have to make up an allegation about the Governor and Jim McDougal exchanging money for favors? What would be the conceivable motive you would have to make that up?

Mr. HOPKINS. I cannot think of one.

Mr. CHERTOFF. What was in your mind? What did you know in 1987 that caused you to say to Ms. Heritage that there was this diversion of loan proceeds? Where did you get that from?

Mr. HOPKINS. First of all, we made the leap that I did say that. Since I don't know that I said that—I don't think that would have been the way I said it—I can't really answer that. I don't have any specific recollection at this point in time. I'm sorry, Counsel. I wish I did, but it's been 9 years.

Mr. CHERTOFF. So you don't remember what your basis was on which to make this allegation?

Mr. HOPKINS. Even if I made it, I do not recall what the basis would be today.

Mr. CHERTOFF. But you have told us previously that it is not in your habit to lie or make up baseless allegations; right?

Mr. HOPKINS. That's correct.

Mr. CHERTOFF. Because you understand that, in fact, that would be something you could be sanctioned for?

Mr. HOPKINS. Absolutely.

The CHAIRMAN. Now, Mr. Hopkins, you have no reason to doubt the veracity of Ms. Heritage—and now it's Ms. Heritage what?

Mr. HOPKINS. Hays.

The CHAIRMAN. Of her recollection, do you?

Mr. HOPKINS. No, Mr. Chairman. I have known—

The CHAIRMAN. Particularly since you can't recall, and she says that not only did she record this but at the time she called Mr. Miller. In fact, she found it somewhat shocking, and that's why she called him.

And obviously, Mr. Miller, you found this disconcerting to say the least; right?

Mr. MILLER. Yes, sir. The allegations were pretty outstanding.

The CHAIRMAN. Sure. And you remember them even at this time because it was—without benefit of this, you would have remembered the general allegations; right?

Mr. MILLER. No, sir, I couldn't say that without looking back at this information. I'd remember that I represented the Peacocks—I mean, litigation against the Peacocks, and that there were some allegations going on, but as far as telling you the specifics of them, I don't think I would have recalled it without this information.

The CHAIRMAN. But you were shocked at the time?

Mr. MILLER. It indicates that I was, yes, sir.

The CHAIRMAN. And you had no reason to disbelieve. As a matter of fact, you believed Ms. Heritage because otherwise, you would not have—you had no reason to disbelieve her and at this time you have no reason to disbelieve her, do you?

Mr. MILLER. I believe her that the conversation had occurred. That's not to give any merit to the allegations that were asserted.

The CHAIRMAN. Exactly, yes. In other words, you believe this is a conversation that she did have and that she relayed to you?

Mr. MILLER. That's correct.

The CHAIRMAN. And truthfully?

Mr. MILLER. Yes. Again, about the conversation, not about the allegations.

The CHAIRMAN. Yes, I understand that distinction.

Do you have any further questions?

Mr. GIUFFRA. Let's put up document No. 3 on the Elmo. This is a chart that Committee staff has prepared based on deposit slips that we obtained from information received from Betsey Wright, who will be testifying tomorrow. She was the Campaign Manager for the 1984 Governor's Campaign.

Mr. Peacock, you attended the fundraiser; correct?

Mr. PEACOCK. I did.

Mr. GIUFFRA. About how many people were at the fundraiser?

Mr. PEACOCK. I don't recall. About 50, 60 or so.

Mr. GIUFFRA. According to this document we have prepared, we have a Madison Guaranty cashier's check number 2496 from J.W. Fulbright in the amount of \$3,000 on 4/4/85. Then we have cashier's checks from Dene Landrum, \$3,000, 4/4/85, check number 2498; and Ken Peacock, \$3,000, 4/4/85, check number 2497. Did you know Senator Fulbright?

Mr. PEACOCK. No, sir. I had met him when I was in—

Mr. GIUFFRA. You knew who he was?

Mr. PEACOCK. I did.

Mr. GIUFFRA. Was he at the fundraiser?

Mr. PEACOCK. I don't recall him being there, but that's been 10 years ago.

Mr. GIUFFRA. Now according to the numbers on these cashier's checks, Senator Fulbright's check was 496, the check you bought for your son was 497, and Landrum's check was 498. Do you know anything about Mr. Fulbright's check?

Mr. PEACOCK. No, sir, I don't.

Mr. GIUFFRA. Let's put up document No. 4. This is the cashier's check you bought for your son. Now, you bought this cashier's check; right?

Mr. PEACOCK. That's correct.

Mr. GIUFFRA. He didn't use his money?

Mr. PEACOCK. Do what, sir?

Mr. GIUFFRA. It was all your money, not any of his money; right?

Mr. PEACOCK. It is a possibility it may have been some of his retirement, you can't tell, but I can't remember at that time, sir.

Mr. GIUFFRA. Then the next check, which is No. 5, that's from your partner for \$3,000, and you bought that check as well; correct?

Mr. PEACOCK. I bought it but he reimbursed me for it later on, if I remember correctly.

Mr. GIUFFRA. But you bought the check at the time; correct?

Mr. PEACOCK. I did buy it.

Mr. GIUFFRA. Let's put up document No. 7. This is a check you wrote for \$6,000. Do you recall writing this check?

Mr. PEACOCK. I really don't, but I am not arguing the point that it was written.

Mr. GIUFFRA. Now did you use any Madison funds to buy either of those cashier's checks?

Mr. PEACOCK. Did I do what, sir?

Mr. GIUFFRA. Use any Madison funds to buy the cashier's checks, loan proceeds?

Mr. PEACOCK. I had two or three bank accounts at Madison, and I don't know whether I wrote this check on a farm account or I wrote the check on a construction account. I don't remember.

Mr. GIUFFRA. Did you use any loan proceeds to buy the check?

Mr. PEACOCK. No, sir, I did not.

Mr. GIUFFRA. Are you absolutely certain of that?

Mr. PEACOCK. I'm certain of that.

Mr. GIUFFRA. Let's put up document No. 8. Now, you wrote the two cashier's checks on April 4, 1985; correct?

Mr. PEACOCK. I don't remember. The document says that.

Mr. GIUFFRA. That was the date of the fundraiser, wasn't it?

Mr. PEACOCK. Here again, I have to assume what you fellas say because I don't remember that far back.

Mr. GIUFFRA. On April 4th, the same day as the fundraiser, same day that you wrote the two cashier's checks, the one for your son and the one for Mr. Landrum, you received another cashier's check for \$50,000 from Madison. Do you recall receiving that check?

Mr. PEACOCK. I see a copy of it right here, but I don't necessarily recall it or I don't deny it, because they paid me several thousand dollars for clearing and development work out there.

Mr. GIUFFRA. Do you know what it had to do with? Was this a loan check? Was this loan proceeds?

Mr. PEACOCK. Sir, I don't remember 10 years ago. I don't remember last week a lot of things I did.

Mr. GIUFFRA. Let's put up document No. 9. Now this is a loan application, it has your signature on the bottom; is that right, sir?

Mr. PEACOCK. It looks like my signature.

Mr. GIUFFRA. It's dated April 5th, in the top right-hand corner is that correct?

Mr. PEACOCK. Yes, sir.

Mr. GIUFFRA. And that's the same amount as this cashier's check for \$50,000 that you received on April 4th, the same day as the fundraiser?

Mr. PEACOCK. That's what the document says. I don't recall it.

Mr. GIUFFRA. Now is there a connection between this loan and the cashier's check as far as you know?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. You're positive about that?

Mr. PEACOCK. I'm positive of that.

Mr. GIUFFRA. Do you recall taking out this loan for \$50,000?

Mr. PEACOCK. I'm sure I did.

Mr. GIUFFRA. Do you know what the purpose of the loan was?

Mr. PEACOCK. I think I was buying some property that we put a trailer park development on, shopping center.

Mr. GIUFFRA. The purpose of the loan on the application is listed as business. It just says business.

Mr. PEACOCK. For me that's big business.

Mr. GIUFFRA. Do you recall what the collateral was on this loan, the collateral that you put up on this loan?

Mr. PEACOCK. Yes, sir. On that loan I put up several brand-new commercial air conditioners probably worth \$200,000 or \$300,000.

Mr. GIUFFRA. Did you pay back this loan, sir?

Mr. PEACOCK. Did I pay back that loan?

Mr. GIUFFRA. Yes, did you default on the loan?

Mr. PEACOCK. I gave the air conditioners to them and RTC gave them away for \$1,500.

Mr. GIUFFRA. So \$1,500 is what the taxpayers got back on this \$50,000 loan; is that right?

Mr. PEACOCK. Sounds right to me.

Mr. GIUFFRA. Let's put up document No. 10. Now on April 5th, the same day you filed this application for the loan, the day after the fundraiser, the day after you received the check for \$50,000 from Madison, you wrote a check to the Quapaw Title Company for about \$39,000. Do you recall writing that check?

Mr. PEACOCK. I don't recall writing it but it's right here in black and white and I won't deny it.

Mr. GIUFFRA. Did you have a property called the Woodson Property that you were involved in at that point that you had purchased? The Woodson Property?

Mr. PEACOCK. That was Woodson Property, yes, sir.

Mr. GIUFFRA. You were involved in purchasing that for Dixie Continental; right?

Mr. PEACOCK. Right.

Mr. GIUFFRA. You were the President of Dixie Continental?

Mr. PEACOCK. I was.

Mr. GIUFFRA. How much did you pay for that property?

Mr. PEACOCK. We paid around 300 something thousand dollars.

Mr. GIUFFRA. About \$330, does that sound right?

Mr. PEACOCK. Sounds about right.

Mr. GIUFFRA. Did you also get a second loan from Madison Guaranty for I believe \$297,000 to pay for that property?

Mr. PEACOCK. I don't remember, sir.

Mr. GIUFFRA. Do you recall using this check to Quapaw Title for \$38,900, was this the downpayment for that property?

Mr. PEACOCK. Here again, I don't remember.

Mr. GIUFFRA. This check for \$38,900 and the check for \$50,000, you don't know what happened to the extra \$11,000, do you?

Mr. PEACOCK. No, I don't.

Mr. GIUFFRA. Is it possible that money might have been used to help fund the fundraiser?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. Your contributions to the fundraiser?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. Where did you get the money for the fundraiser?

Mr. PEACOCK. At the time I was farming several thousand acres, and as I mentioned in my deposition, my fuel bill a week was \$10,000. That could have come out of any account that I had.

Mr. GIUFFRA. Now at the time you purchased the two cashier's checks were you aware that it was illegal in Arkansas for one person to contribute more than \$1,500 per candidate per election?

Mr. PEACOCK. No, I was not aware of that.

Mr. GIUFFRA. Did anyone from the Clinton campaign advise you as to what the contribution limits were?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. Were you aware at this time that it was illegal to make a contribution in the name of another person?

Mr. PEACOCK. I was not.

Mr. GIUFFRA. No one from the campaign advised you of that fact?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. Let's put up document No. 11. This is a document we received from Mr. Kendall and it is a memo to Governor Clinton from Nancy Hernreich.

One of the attendees at this fundraiser was a man named R.D. Randolph. Do you know R.D. Randolph?

Mr. PEACOCK. Yes, sir, I do.

Mr. GIUFFRA. Do you recall seeing him at the fundraiser?

Mr. PEACOCK. No, I don't, but he was very likely there.

Mr. GIUFFRA. According to the documentation that the Committee has received, Mr. Randolph gave \$2,000 at this fundraiser to Governor Clinton. This memo indicates that Mr. Randolph wanted to talk to the Governor about the veto of a water bill, it says, "He mentioned a meeting between you, Tucker and Jim McDougal a couple of years ago which involved \$33,000. This was pretty cryptic." Now this is back in 1987. Two years ago would be 1985. Do you know any reason why Mr. Randolph would be raising the issue of this fundraiser?

Mr. PEACOCK. I have no idea.

Mr. GIUFFRA. You haven't ever discussed the fundraiser with Mr. Randolph?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. Ever discussed the fundraiser with Mr. McDougal after it happened?

Mr. PEACOCK. No, sir.

Mr. GIUFFRA. No further questions.

Mr. BEN-VENISTE. Did you have anything at all to do with any conversation with R.D. Randolph or this memo that Mr. Giuffra is talking about?

Mr. PEACOCK. No, sir. I would have no occasion to, sir.

Mr. BEN-VENISTE. Had you ever heard of this before?

Mr. PEACOCK. I have never heard of it until today.

Mr. BEN-VENISTE. In connection with the fundraiser, there were thank you letters sent out, according to our records, from the Clinton for Governor for Arkansas Campaign, dated May 3, 1985. One was to Ken Peacock and the other was to Dene Landrum. Are you aware that these individuals received thank you letters for their contributions?

Mr. PEACOCK. No, I wasn't, but I am not surprised. If someone gave me that much on contribution, I bet I'd thank them.

Mr. BEN-VENISTE. Do you have any reason to believe that Governor Clinton or his staff had knowledge that you were the person who made these contributions?

Mr. PEACOCK. No, sir.

Mr. BEN-VENISTE. Mr. Hopkins, let me go to you for a minute, and let's go back to the question of what it was you said to Ms. Heritage in 1987. You've indicated that you had no evidence that there was any quid pro quo of leases for contributions; correct?

Mr. HOPKINS. As of today, I recall none.

Mr. BEN-VENISTE. Indeed you have indicated that it is your practice to saber rattle and to posture in connection with your everyday litigation dealings with other parties in the hope that some of the things that you talk about will eventuate into provable allegations at some point?

Mr. HOPKINS. Yes, sir.

Mr. BEN-VENISTE. And you are hopeful that by making such posturing allegations, that you will be able to achieve some advantage either in settling the case or in the litigation?

Mr. HOPKINS. That's correct.

Mr. BEN-VENISTE. Now according to Ms. Heritage, when this matter was raised by the press in 1995 after these documents were leaked, she ran into you and you all had a brief conversation in which she said that you said you were just posturing at the time. You don't recall having made that statement; correct?

Mr. HOPKINS. That's correct.

Mr. BEN-VENISTE. But you would agree that that's just what it was you would have done according to the normal way you do business; correct?

Mr. HOPKINS. Yes, I see nothing contradictory in the statements.

Mr. BEN-VENISTE. You were asked about another lease in 1985 that was entered into between Madison and the State of Arkansas. That was the expansion of space in a lease which had been entered into in 1984 for a grand total of an additional 1,500 square feet, more or less the size of an efficiency apartment. Were you aware of that?

Mr. HOPKINS. The first time I have heard about that particular—that specific transaction was late this morning. I still don't know the specifics of it, but your description of it sounds consistent with what I heard this morning.

Mr. BEN-VENISTE. OK. So as far as what you knew back then, all you knew is as you've testified, that there was a fundraiser and that at some point a State agency had moved into the Madison headquarters; correct? You didn't know what the timing was?

Mr. HOPKINS. That's correct.

Mr. BEN-VENISTE. And as we have shown, the timing could not have possibly supported a quid pro quo of a contribution made in 1985 in return for a lease that was entered into a year beforehand.

Let me turn to you, Mr. Miller, and the memorandum that you produced. In the second paragraph you indicate that, "On April 21, Ms. Pat Heritage informed me that she had spoken with Mr. Greg Hopkins, attorney for the Peacocks. Mr. Hopkins informed Ms. Heritage that there is a move underway to have our firm disqualified for representing Madison." And then it goes on to say the purported basis for the disqualification. Was there ever any move to disqualify you?

Mr. MILLER. No, sir.

Mr. BEN-VENISTE. That was another posturing or saber rattling by Mr. Hopkins that did not eventuate and had no basis in fact?

Mr. MILLER. That's correct.

Mr. BEN-VENISTE. Did the grounds for any such conflict have any basis in fact as far as you knew?

Mr. MILLER. No, sir, there's none that I knew, and I couldn't logically put together how that could be a conflict.

Mr. BEN-VENISTE. According to Ms. Heritage, Mr. Hopkins said that the litigation had gotten too dirty for him and he was considering resigning the representation. To your knowledge, did he resign the representation?

Mr. MILLER. To my knowledge, no.

Mr. BEN-VENISTE. And did you resign the representation, Mr. Hopkins?

Mr. HOPKINS. No, sir.

Mr. BEN-VENISTE. This was another posturing or saber rattling, as it were, that did not eventuate. What was it that you did in court, that according to Ms. Heritage, Mr. Hopkins took issue with?

Mr. MILLER. I do not know. There are only two possibilities I can think of. One would have been Greg and I had some prior settlement discussions, and as I recall there was an effort or an attempt to try to delay that bankruptcy hearing, and that maybe he thought we had it continued or had it settled, and I wouldn't agree to that. That could have been one possibility.

The other possibility I recall was that there may have been some mention that some loan proceeds made right before this entity went into bankruptcy could have possibly been used to pay Mr. Hopkins' attorney's fees. And I do not know. There may be other possibilities. Those are the only two I can recall.

Mr. BEN-VENISTE. Did you recall Mr. Hopkins' reaction in court to those?

Mr. MILLER. I don't recall his reaction in court. Apparently, afterwards, he was not happy whatever the allegation was.

Mr. BEN-VENISTE. Did he bring that to your attention directly?

Mr. MILLER. No, sir.

Mr. BEN-VENISTE. In typing up this memorandum and preserving it and turning it over to the authorities when requested to do so, did you have any concern about the underlying allegations being true?

Mr. MILLER. None whatsoever. I mean, it was typical debtor baloney. Greg is on one side and he is talking about saber rattling. I'm on the other side, collecting, and I heard it all the time. I didn't believe that it had any merit whatsoever. Case closed.

Mr. CHERTOFF. You know, Mr. Hopkins and Mr. Miller were in kind of an unusual position here because Mr. Ben-Veniste is kind of intent on showing you, Mr. Hopkins, to be just an empty saber rattler and a weaver of webs. And I'm intent on showing that you must have some heck of a saber.

Let's go first to that portion of your conversation with Ms. Hays where she remembers you talking about people going to prison. I guess we can say now here, in 1996, that a fair number of the people included in that inner circle at Madison either have pled guilty to various crimes or, in fact, been tried for various crimes. So I guess it is to that portion of the conversation you would agree with me it turns out that that prediction had a lot of substance; right?

Mr. HOPKINS. Counsel, if I said that, it appears to have been a pretty good prediction.

Mr. CHERTOFF. Now let's go to another prediction. You told Ms. Hays—and again you didn't say you were going just to discover or investigate it, you represented it, you stated it to her as a fact—that money had been diverted from one of the loans that Mr. Peacock received into this campaign fundraiser. What do you know, when you look at the documents, again, we are comparing the documents generated at the time with the testimony people choose to remember or not to remember 10 years later.

What we see is that, on the very day of the fundraiser, Mr. Peacock took out a \$50,000 loan and didn't even have to sign the loan document for Madison Guaranty until the next day, meaning that he got the money even before he signed the note, which is always nice. That having gotten the \$50,000, Mr. Peacock then cut a couple of checks that went to the fundraiser, and that when you look to see where the \$50,000 that Mr. Peacock took out actually went, we can account for about \$39,000 of it, but \$11,000 of it just seems to have disappeared. Mr. Peacock has told us he can't really remember what happened to that. So one could draw the conclusion that maybe there was a reimbursement here for a campaign contribution.

Now in view of these documents showing the remarkable timing of the loan and then the cashier's checks, the sequential cashier's checks for campaign contributions occurring on the very same day, I guess you would agree with me that your statement to Ms. Hays about diversion of the proceeds of the Madison loan also has kind of a connection to some objective reality; right?

Mr. HOPKINS. Once again, I don't recall what I said. Regardless of whether I said yes, this happened or we will be looking into it, those documents, at least, would lend some foundation to what I said or what I did.

Mr. CHERTOFF. We also know that within a matter of days after this interesting sequence of checks and campaign fundraiser and loan, there was a discussion of expanding the space that the State would take in Mr. McDougal's building, and what do you know, \$50,000 more of leases come through a few months later.

Mr. PEACOCK, I want to close this up by focusing to see if I can stimulate your memory on this \$50,000 note. I'm going to ask that you be given a copy of a memorandum to John Latham from Jim McDougal dated March 27, 1985, about a week before this fundraiser and this loan occurred. We will put it up on the screen there. You knew John Latham from the bank; right?

Mr. PEACOCK. I did.

Mr. CHERTOFF. It says:

Have Charles Peacock execute the \$50,000 note secured by the air conditioners. Have him carry a blank note and mortgage as well as a standard Offer and Acceptance form with him for he and his wife, Judy, to execute.

Have him resign from the Board, and do not fund the \$50,000 loan. Tell him I will call him about it Friday.

What did he say to you about this?

Mr. PEACOCK. I don't remember him saying anything, and I certainly would have known about any note between John Latham and Jim McDougal.

Mr. CHERTOFF. Well, is there a connection here between you getting this loan and your resigning from the Board?

Mr. PEACOCK. It had nothing to do with that. I was running a farming operation, a construction business, and selling glass-lined tanks. I was working about 18 or 19 hours a day and I didn't have time to go to the Board meetings, and it was just time for me to get off. If it happened at this particular time, it was coincidental.

Mr. CHERTOFF. Wasn't it, in fact, the next day that you resigned from the Board?

Mr. PEACOCK. I don't remember, sir, but I am not going to argue with your figures right here. But it wasn't anything that they told me I had to do.

Mr. CHERTOFF. I don't want to blindside you because the minutes show you did resign the next day. But you don't see any connection between that resignation and the loan, even though we have a memo that shows that there is a connection?

Mr. PEACOCK. I don't, and I don't know that that memo had anything to do with me, really, when it comes down to it, because I wasn't aware of what Latham and McDougal did. And as I told you before, I got out there and got the jobs done that they needed to be done.

Mr. CHERTOFF. All right. Nothing further.

The CHAIRMAN. I have no further questions.

Mr. BEN-VENISTE. I have a question about the notion of making a \$50,000 loan as consideration for \$6,000 in contributions. That arithmetic doesn't seem—

Mr. PEACOCK. Sir, I'm not very bright, but I'm smarter than that.

Mr. BEN-VENISTE. When we talk about a heck of a saber, in Mr. Chertoff's words, what we are talking about, to go back to the underlying claim that is in your memorandum, and follow with me here, Mr. Miller, the statement is on page 3, "In return for the substantial campaign contribution, Bill Clinton assured Jim McDougal

that a State agency would lease space from Madison at its headquarters on Main Street in Little Rock."

Now that Main Street, Little Rock headquarters was at 100 Main Street—I'm sorry—1501 Main Street, and it was the Madison Guaranty Savings & Loan headquarters. We know without a doubt that that headquarters provided space in the amount of some 7,000 square feet in a 5-year lease entered into in April 1984.

Mr. MILLER, if you are looking at this allegation and somebody is trying to rattle a saber at you but they make a mistake where they are a year off like this, is this going to have any effect on you?

Mr. MILLER. No, sir.

Mr. BEN-VENISTE. We heard testimony this morning from Mr. Epes to say that, by 1985, his agency had expanded to the point where it needed additional space. They took an additional 1,400 square feet of contiguous space at the Madison Savings & Loan. Does this strike you as something in the nature of some devious conspiracy?

Mr. MILLER. I don't have an opinion either way, but it doesn't strike me as being some kind of great conspiracy.

Mr. BEN-VENISTE. No one asked Mr. Epes whether there was any question but that his agency needed the space. The space was available and it was rented at market. The notion that that 1,400 square feet is the payoff for the 1985 fundraiser strikes me as just totally and utterly ludicrous. Do you have some other view?

Mr. MILLER. No, sir. We viewed all these allegations to be without merit and we proceeded within about a week or so to file in State court to try to take Mr. Peacock's house from him.

Mr. BEN-VENISTE. You were undeterred by this?

Mr. MILLER. That's correct.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. OK. I want to thank the panel for coming.

Mr. Peacock, I asked staff with respect to the inconvenience and they told me we were attempting to get two panels, seven people, together. They tell me that you indicated, and I want to thank you, that you were available everytime they called, trying to coordinate with the other lawyers and there was another panel of four people today was the reason. We are trying to get that in under the February 29th deadline.

Mr. PEACOCK. We worked on that thing all the way through I think December.

The CHAIRMAN. I understand that. I just want you to understand that we thank you because you were available whenever we called. It was a question of coordinating with the other six people, and we could never get that coordination; and thereafter, it came to the situation that this whole matter was suspended, so it certainly was not by intent to harass you in any way, but it was a question of trying to coordinate all of the schedules.

Mr. PEACOCK. I had a summons from the Senator, the Chairman, that said, "I would be available" presented to me. I had a notice given to me by Mark that, if I didn't show up, the U.S. Marshals would come and get me. So you're durn right, I was available but I missed out on my work.

The CHAIRMAN. But even without that subpoena coming, the staff indicates that you were willing to cooperate. I just wanted to

thank you for that and try to set the record straight by explaining how that situation came about, because I did ask staff what the situation was.

Let me say that I think the testimony from the two panels was very powerful. I want to thank you for your participation.

Mr. Miller, I want to assure you that my initial observations were so that you would be in a position to testify and we could hear you. It was not an attempt to trick you or anything like that.

We thank you for your candor. We thank you for being here.

We stand in recess until tomorrow morning at 10:00 a.m.

[Whereupon, at 3:36 p.m., the hearing was adjourned, to reconvene at 10:00 a.m., on Thursday, April 25, 1996.]

[Appendix supplied for the record follow:]

Arkansas State Building Services
Standard Lease Form I
Revised and Approved by
Attorney General, May, 1979

Lease Term 7-1-84 to 6-30-89
Annual Rent: \$ 58,530.00
Square Feet: 6852
Rate: \$ 8.50 per square foot
Type: OF
New: X Renewal:
Worked By: HV
County 60 Agency 395 Size 01

Fund Raised
1

STATE OF ARKANSAS LEASE AGREEMENT

THIS LEASE MADE this 1st day of April, 1984, by which
Madison Financial Corporation ("LESSOR")

leases to the STATE OF ARKANSAS ("STATE") by Arkansas State Building Services ("SBS")
for the use of Arkansas Housing Development Agency, 1501 Main Street, Little Rock,
Arkansas 72202

or any other Department, Board, Commission or Agency of the STATE which SBS shall
designate ("AGENCY"), the described property ("PREMISES") upon the terms of this
lease.

1. PREMISES 6852 square feet of office space (consisting of 6385 sq. ft.
of usable space and 467 sq. ft. of common use space) with 25 automobile
parking spaces designated by Lessor and an additional handicapped space at
1501 Main Street all situated in the
City of Little Rock, County of Pulaski,
Arkansas

The initial term will begin on July 1, 1984 or as soon thereafter
the building is completed to meet plans and specifications and the Lessor's contract
and SBS agree that the space is ready to be occupied and end June 30, 1989
Should occupancy occur at a date later than July 1, 1984, the portion of that month
rent shall be prorated on a daily rate of \$161.78.

3. RENT. The STATE agrees to pay \$ 4,853.50 per calendar month (quarterly)
in advance on the first day of each such period upon invoice from the LESSOR. Such
amount to be paid by the AGENCY to LESSOR at:

1501 Main Street

HOUSING

4. UTILITIES AND SERVICES. The LESSOR will furnish the following utilities and services:

<u>yes</u> electricity	<u>yes</u> heat and air conditioning
<u>yes</u> gas	<u>yes</u> hot and cold water
<u>N/A</u> elevator services	<u>yes</u> water and sewer
<u>yes</u> trash removal	<u>yes</u> janitorial services and supplies daily (or -----)
<u>yes</u> lamps, tubes, ballasts	<u>yes</u> Security Service

5. MAINTENANCE, REPAIR, REPLACEMENT. LESSOR agrees to maintain the PREMISES in good repair and tenantable condition, making replacements when necessary according to the reasonable satisfaction of the SBS including, but not limited to, all structural components, mechanical equipment, pest extermination and snow removal. If LESSOR fails to correct a deficiency within thirty (30) days after written notice from SBS or the AGENCY or within an appropriate shorter period stated in the notice in the event of a deficiency constituting a hazard to the health and safety of the STATE'S employees, property or any other person, the STATE may perform such maintenance or make such repair at its own cost and, in addition to any other remedy it may have, the STATE may deduct the amount thereof from any amount that may then be or thereafter become due. The STATE's obligation to perform such maintenance or make such repair and the LESSOR'S obligation under this Lease are hereby made dependent upon the occurrence of such deficiency.

6. CASUALTY & DESTRUCTION. LESSOR shall bear the risk of loss by fire or casualty and shall maintain fire and extended coverage insurance to the full replacement value of the PREMISES. Upon any such occurrence, resulting in a casualty to the extent that the agency cannot continue its operations, the rent shall terminate. LESSOR agrees to promptly repair or replace any part of the PREMISES damaged or destroyed. Should the building not be restored to its original condition, reasonable wear and tear excepted, the Lease may be

LESSOR

LESSOR

7. TERMINATION. The STATE may terminate this Lease by thirty (30) day written notice to LESSOR by SBS if the AGENCY'S funds are insufficient for it to continue the operations for which the PREMISES are being used.

8. MISCELLANEOUS. (a) This Lease and any modification or amendments to it will not be valid without the written approval of SES. (b) This Lease shall benefit and bind the parties hereto and their heirs, personal representatives, successors and assigns. (c) The STATE may terminate this Lease by written notice from SBS to LESSOR upon the taking by eminent domain of any part of the PREMISES. (d) Nothing in this Lease shall be construed to waive the sovereign immunity of the STATE or any entities thereof. (e) This Lease contains the entire agreement of the parties.

9. SPECIAL PROVISIONS. A. LESSOR shall provide STATE BUILDING SERVICES and ARKANSAS HOUSING DEVELOPMENT with an annual expense statement covering utilities and janitorial services costs. The first statement shall include the first year July 1, 1984 through June 30, 1985. The second statement shall reflect expenses incurred July 1, 1985 through June 30, 1986. Upon receipt of this second statement, STATE BUILDING SERVICES LEASING ADMINISTRATOR, AGENCY DIRECTOR and LESSOR shall review these expenses and negotiate the renewal rate for July 1, 1986 through June 30, 1989, based only on utilities and janitorial expenses incurred by LESSOR as projected by authorized personnel from the utility companies.

B. LESSOR agrees to construct the Agency's space according to the plans and specifications provided by STATE BUILDING SERVICES and approved by the Agency prior to executing this agreement. (See attached Floor Plan and Specifications).

C. LESSOR agrees to provide Levlor Blinds in all offices, except the Director's office will have special tinted glass. D. The rentable area of 6852 square feet includes 6385 square feet of net usable space and 467 square feet of common use space in the hall and restrooms. E. LESSOR will comply with all codes, law and regulations as they apply to access for handicapped individuals. F. State

HOUSE COPY

Office will make color selection with for

approval by LESSOR. G. Lessor shall provide adequate air-conditioning in the Computer Room to maintain temperature below 90° degrees.

10. ALTERATIONS. The STATE may make alterations, attach fixtures and erect additions and signs in or upon the PREMISES with prior written approval by LESSOR. Such fixtures, additions, and signs shall remain the property of the STATE and may be removed from the PREMISES within a reasonable time after the termination of this Lease provided the STATE shall restore the PREMISES to a condition as good as at the beginning of this Lease, ordinary wear and tear excepted.

EXECUTED by the parties who individually represent that each has the authority to enter into this Lease.

LESSOR:

Medison Financial Corporation

STATE AGENCY:

Arkansas Housing Development Agency

By: Paul H. Castleberry
Paul Castleberry, Vice President

By: Wooten Epps
Wooten Epps, Executive Director

Date: 4-10-84

Date: 4-9-84

STATE OF ARKANSAS

By: Arkansas State Building Services

By: [Signature]
SBS Building Administrator

Date: 4-10/84

By: [Signature]
SBS Director

Date: 4/10/84

UNCLASSIFIED
GOVERNMENT

ARKANSAS HOUSING DEVELOPMENT AGENCY

March 5, 1964

Ms. Helen Vonn
State Building Services
1515 West Seventh Street
Little Rock, AR 72201

Dear Helen:

NHDA has decided to reject the proposal of Madison Quarry to provide office space at 1501 Main Street.

We initially authorized you to negotiate a lease at Brookwood Drive for an anticipated net rent of \$6.50 per square foot. The final proposal was for \$7.25 per square foot, and a gross rental of \$8.40 per square foot for a leased space of about 5800 square feet, which would cost us \$49,680 at the gross rental price. This proposal was apparently disapproved by Building Services because the price was not acceptable. NHDA concurred in the objection of that bid because of its excessive cost.

An analysis of the Madison Quarry bid for 6698 square feet (6629 net leased space), the net rental is \$44,886. But, we do not have the option of controlling the utility costs, and accordingly, are expected to pay \$1.50 per square foot for utilities and services which would be a gross rental of \$66,311. Therefore, the cost is about \$7.07 per year higher.

We would like to lease in a location downtown, preferably within walking distance of our attorneys. In addition we are expecting approval of additional space for the Agency within a few months when we are certain of need. That space will be a large addition to our potential downtown locations. I realize that the cost of the new location is a major factor in our decision.

Sincerely,

Helen Vonn

HOUSING

EXECUTIVE DIRECTOR

ME/ee

[20] Q And your recollection, it was shortly after
[21] it was received?

[22] A Yes.

Page 142

[11] Q And I want to be clear, ADFA left the
[12] Madison space before the lease term expired: is that
[13] right?

[14] A Yes.

[15] Q And I just want to make sure actually, do
[16] you recall what caused that, that departure?

[17] A Madison quit maintaining the building, and
[18] Wooten had growing concerns about the maintenance
of

[19] the building, and the security issues.

[20] Q Did he still have problems with the space?

[21] A I don't recall that that was an issue as
[22] much as it was that the maintenance of the building,
it was dirty.

[14] Q The security problem was one they continued
[15] to have over a couple of years; is that right?

[16] A Yes.

[17] MR. O'CALLAGHAN: I have no further
[18] questions at this time.

[19] MR. FROMEWICK: I have just a couple of
[20] follow-ups. This means we are really close to the
[21] end.

[22] EXAMINATION

Page 143

[11] BY MR. FROMEWICK:

[12] Q Mr. O'Callaghan asked you if any other
[13] bidders had been called into Mr. Mallard's office to
[14] meet you and you said no. But at the point that you
[15] met Ms. McDougal, they weren't actually a bidder,
[16] were they; you had never received a proposal from
[17] them?

[18] A Right.

[19] Q So had this meeting never taken place, at
[20] that point they are not a bidder?

[21] A That's right.

[22] Q Bidders generally sent you proposals?

[13] A Right.

[14] Q And occasionally people that, for other
[15] reasons, that might not have had an official bid in,
[16] might meet you the way you met Ms. McDougal?

[17] A Yes.

[18] Q Now, when Mallard pretty much told you that
[19] the Madison proposal was the one you were going to go
[20] with, did he specifically use the words "because the
[21] governor wants this"?

[22] A No.

Page 144

[11] Q What did he tell you?

[12] A He said the governor's office wanted us to
[13] lease this facility.

[14] Q Was it -- from your point of view, did
[15] Mallard want it as well?

[16] A Yes.

[17] Q And why did Mallard tell you he wanted it?

[18] A He wanted to support the McDougals also.

[19] Q And he told you that in those words?

[20] A I can't say he specifically said that but I
[21] knew that he wanted to. He was quite interested in
[22] it.

[13] Q But how did you know that? The reason I
[14] ask you that is, I would like you, if you can, to try
[15] and separate what you knew as a general proposition,
[16] living in a small town, about who was friends were
[17] who, and what you found out, specifically during the
[18] performance of duties of your job.

[19] And there is -- it is not really a fine
[20] line. There is a big distinction between the two.
[21] It is one thing for --

[22] A It is hard to do after this long a period

Page 145

[11] of time has gone by and so much has been said about
[12] it now.

[13] Q So back up if we can to that period of
[14] time, yes, you knew that McDougals and Clinton were
[15] friends, and you said you knew that Mallard was
[16] friends of the McDougals?

[17] A He was friends and he would talk about
[18] seeing them in a social setting. And I don't recall
[19] exactly what he said to me when he told me that we
[20] were not going to consider other proposals, only the
[21] Madison proposals. But as I recall, he said the
[22] governor's office wants us to lease this space, and
that's the way it is going to be.

[14] Q And you are quite clear about that?

[15] A That's the way I recall it.

[16] Q Okay. And just on one final note, from
[17] your point of view, the space met all the needs of
[18] ADFA?

[19] A Yes.

[20] MR. FROMEWICK: Okay. I have no further
[21] questions.

[22] MR. O'CALLAGHAN: I have two more quick

Page 146

[11] ones and that should be it.

[12] EXAMINATION

[13] BY MR. O'CALLAGHAN:

[14] Q When you brought the objections from
[15] Mr. Epes to Mr. Mallard's attention, you mentioned
[16] earlier that again the sentiment was expressed the
[17] governor's office wanted to lease that space; is that
[18] right?

[19] A Yes.

[20] Q And that there was mention that the
[21] McDougals and the Clintons were friends; is that
[22] right?

[13] A Yes.

[14] Q And that Mr. Mallard was friends with the
[15] McDougals?

[16] A Yes.

[17] Q Okay. And with regard to Mr. Mallard's and
[18] yours and Mrs. McDougal's meeting, was that a first
[19] attempt by Madison to make a bid on getting the
[20] leasing contract?

[21] A Did you say was that the first attempt?

MEMORANDUM

TO: JSS
FROM: LM
DATE: April 23, 1987
RE: Madison v. Peacock

Our firm represents Madison Guaranty Savings & Loan Association ("Madison") in several collection matters related to Charles Peacock, III, his children and related entities. We have been dealing primarily with Ms. Pat Heritage, a loan and collection officer with Madison.

On Tuesday, April 21, 1987, Ms. Pat Heritage informed me that she had spoken with Mr. Greg Hopkins, attorney for the Peacocks. Mr. Hopkins informed Ms. Heritage that there is a move underway to have our firm disqualified from representing Madison. The basis of the disqualification is that Jim Guy Tucker has substantial involvement with Madison and with Mr. Jim McDougal, that this creates a conflict, and therefore, our firm should be disqualified.

Mr. Hopkins went on to explain that there was substantial wrongdoing regarding the prior administration of Madison, that several people were "going to go to prison," and that our firm will be severely embarrassed when a full disclosure is made and our firm is disqualified with potential sanctions being imposed. Mr. Hopkins also stated that the matters

HOUSE

regarding the Peacocks and Madison was getting too dirty and he has considered resigning his representation of the Peacocks.

Mr. Hopkins further informed Ms. Heritage that Madison should seek additional counsel not only because of Jim Guy's conflict, but also because all our firm is doing is churning the files in an effort to enhance the amount of the billings and that we have no concern for the ultimate outcome or the costs incurred by Madison.

In addition, Mr. Hopkins informed Ms. Heritage that one of the loans made by Madison to Dixie Continental Leasing, upon which Marcy Taylor has undertaken foreclosure proceedings, also involves fraudulent transactions. Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a state agency would lease space from Madison at its headquarters on Main Street in Little Rock. I fail to see any conflict with regard to our firm based upon the Dixie Continental/Bill Clinton transaction, but Mr. Hopkins seems convinced that wrongdoing existed that would be imputed to our firm.

Mr. Hopkins further stated that I should not have said what I did in front of the Bankruptcy Court at the hearing held on Wednesday, April 8, 1987. At that hearing we were successful in having the Peacock Brothers d/b/a The Peacock
HOUSE

Company's Chapter 11 bankruptcy petition dismissed with prejudice.

I am of the opinion that Mr. Hopkins was severely embarrassed as a result of having the Chapter 11 dismissed with prejudice after he had made representations to his client that everything would be taken care of. Mr. Hopkins is now apparently attempting to slander our firm and making allegations that I feel are wholly unsupported by the facts in these proceedings. I am greatly offended that Mr. Hopkins has imputed that Mr. Tucker is some way involved with the fraudulent dealings and that our firm is involved in misdealings.

On April 21, 1987, immediately after discussing this matter with Ms. Pat Heritage, Tim Grooms and I discussed the matter with Mr. Tucker. Jim Guy reassured us that he has no conflict with regard to his personal transactions with Madison. In addition, Jim Guy informed us that a full disclosure of his transactions with Madison has been made to the FSLIC and that the representation of our firm has been approved by the FSLIC. Jim Guy suggested that I draft this memorandum to inform you of the statements made and to solicit your advice regarding the allegations made by Mr. Hopkins.

Please review the matters set forth above and, at your convenience, contact either Tim or myself regarding any comments or suggestions that you may have to an effective resolution of the matters set forth herein.

HOUSE

cc: Mr. Jim Guy Tucker

Copyright 1995 The Times Mirror Company
Los Angeles Times

July 31, 1995, Monday, Home Edition

SECTION: Part A; Page 8; National Desk

LENGTH: 850 words

HEADLINE: CLINTON OKD STATE LEASE WITH S&L IN '84, MEMO REVEALS

BYLINE: From Associated Press

DATELINE: WASHINGTON

BODY:

While Arkansas governor, Bill Clinton resolved a dispute over leasing office space for state agencies by confirming a recommendation to award the contract to his Whitewater business partner over the repeated objections of a state agency.

The President's role, acknowledged last week by a Clinton confidant and a former state official, marks the first known instance in which Clinton was involved in a state decision that financially benefited Madison Guaranty Savings & Loan, which was owned by James B. McDougal and subsequently went broke.

Clinton's role in the state lease comes to light as the Whitewater independent counsel is studying an attorney's 1987 memo that describes thirdhand an allegation that Clinton promised state lease business to McDougal in exchange for a "substantial campaign contribution."

Arkansas records show Madison Guaranty received three state leases worth tens of thousands of dollars from Clinton's gubernatorial administration in the mid-1980s. One lease was finalized in 1984; the other two were approved after a controversial April, 1985, fund-raiser that McDougal hosted for Clinton at Madison.

Clinton's personal lawyer, David E. Kendall, said that while Clinton supported moving state agencies into the poor Little Rock neighborhood that McDougal and others were refurbishing, there was never any connection to political contributions.

The 1987 memo's allegation originated with a lawyer representing Arkansas businessman Charles Peacock III, a former Madison official who at the time was trying to stop the S&L from foreclosing on several of his business and personal loans.

Peacock's contribution to Clinton at the 1985 fund-raiser has been a focus of the Whitewater investigation. He later was hired to renovate one of the buildings that received a state lessee.

In a three-page memo dated April 23, 1987, Lance Miller, an attorney working to collect loans overdue to Madison, recounted allegations made by Greg Hopkins, Peacock's attorney. The memo quotes Hopkins as stating that some of the proceeds from a loan his client received from Madison on April 4, 1985, were diverted as a donation to Clinton's campaign.

Investigators believe the donation was delivered to Clinton at the fund-raiser later that day at Madison. They have alleged it was disguised in the name of two other contributors as part of a larger scheme to divert S&L funds to Clinton's campaign. McDougal and Peacock have disputed the diversion allegations.

"Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing (Peacock's company) went to Bill Clinton's campaign, and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a state agency would lease space from Madison at its headquarters on Main Street in Little Rock," the memo said.

Investigators also have Miller's handwritten notes, which state: "Dixie loan went to Clinton campaign, signed lease to state, a lot of people going to prison!!"

Miller wrote the memo after a call from Pat Heritage, a Madison loan officer who heard the allegations from Hopkins.

Miller and Heritage said this month that the memo was accurate but that they believed Hopkins' allegations amounted to posturing to stop the loan foreclosure. Heritage said she was recently questioned extensively about the memo by officials working for Whitewater counsel Kenneth W. Starr.

An individual close to Clinton, speaking only on condition of anonymity, confirmed that Clinton was drawn into the 1984 lease dispute after the state housing agency refused to move into Madison's headquarters. The move had been recommended by the state leasing agency.

"Two agencies had disagreed," the source said. "The governor decided to go with Madison, to go with the recommendation of the State Building Services, the expert agency."

Paul Mallard, who ran the building services office, said Clinton "never tried to influence me."

Wooten Epes, then the housing agency head, said he met with Clinton in the governor's office in 1984 shortly after Epes wrote two letters: one recommending an alternative site and the other rejecting Madison as too expensive and in an undesirable location. He then appealed to Clinton, who would not overrule the leasing agency's recommendation.

"The only thing I recall coming from it was, the governor was aware of the redevelopment in that part of town, and he thought it would be good for the state to be part of it," Epes said.

McDougal said he probably discussed the leases with Clinton.

"I'm not trying to deny I might have said, 'Hey, Bill, why don't you give us something for this area down here?' " that was mostly populated by poor minorities, McDougal said. But he said there was no connection to any political donations.

The source close to Clinton said he was unaware of any involvement by Clinton in the two leases awarded after the fund-raiser.

Hopkins did not return half a dozen calls seeking comment and refused to see a reporter at his office. Peacock would say only that "I don't know anything about" the memo's contents.

BILL CLINTON
Governor

ARKANSAS HOUSING DEVELOPMENT AGENCY

October 11, 1968

Mr. Carl Brones
State Building Services
Suite 700, 1515 Building
Little Rock, Arkansas 72201

Dear Carl:

After reviewing the office space which your Agency has surveyed, the AHDA requests that you negotiate with Rector, Phillips, Morse to obtain a lease from the owner of the property located at 1120 Brookwood. There are several aspects of the lease which we would like to discuss with you including parking spaces and the location of windows, doors and interior walls. C. E. Anderson will contact you to review our suggestions for allocation of floor space.

Sincerely,



1 to your attention?

2 A The governor never said anything to me at
3 all about this lease or any other lease that we made
4 while I was at state building service, 4-1/2 years or
5 whatever length of time I was there.

6 Q Did anyone in his office tell you about a
7 meeting between the governor and Mr. Epes?

8 A Not that I can specifically remember, no.

9 Q Do you have a general recollection that
10 that might have happened?

11 A Well, it might have happened, I don't
12 know. I don't have any way of knowing for sure.

13 Q I am just trying to get a feel for, if you
14 have a -- just a general recollection, that that did
15 occur, but you can't specifically recall --

16 A Well, I can't. It might have occurred, but
17 I can't, I just don't recall anybody calling me
18 saying Mr. Epes has met with the governor or anything
19 like that.

20 Q Did you ever see any written correspondence
21 to that effect?

22 A No.

1 Q Do you remember any meetings you had with
2 Ms. Vowell or Ms. Herr with regard to the lease, the
3 AHDA lease? Did you ever say to her that one of the
4 reasons why you were going forward with the lease was
5 because the McDougals were friends of the Clintons
6 and there was a desire to help out the McDougals?

7 A No, I don't specifically remember any
8 conversation like that. You know, I am sure it was
9 assumed. You know, everybody assumed that everybody
10 was friends with the governor, you know.

11 Q At the time -- during the time of this
12 lease, were you aware that the McDougals and the
13 Clintons were familiar with each other?

14 A Why sure, I knew they were familiar with
15 each other. Everybody that was, you know, in
16 business, and, you know, I think I have seen him at
17 fundraisers and various other things or seen Jim at
18 those. And Mr. McDougal has been in politics ever
19 since he's been a little boy, so I knew that --
20 everybody knows everybody here in Arkansas.

21 Q Well, sir, did you know that during the
22 time of this lease, that -- were you aware that the

MEMO

December 17, 1985

TO: Davis Fitzhugh

FROM: Sue Strayhorn

Ms. Margaret Carter came by this morning to see Jim McDougal, and was referred to him by Bill Clinton and Guy Berry. She is interested in leasing space for an art studio, possibly upstairs at 1300 Main. She can afford approximately \$500 per month, plus utilities, for comparable floor space. If not at 1300 Main, then something similar.

She can be reached at 664-1136 before 4:00 p.m. today, and will be returning Friday.

Can you help her?

ss

1 MG 000J950 1

S-KCR03172

CONFERENCE MEMORANDUM

RE: _____

Fund Raiser
17

FILE: _____

CONFERENCE (telephone/office) with Pit Heritage
374-7777
Telephone No.SUBJECT: Move underway to disqualify
based on JGT.FACTS: Dixie loon ~~was~~ went to Clinton Campaign
Signed ~~the~~ ~~campaign~~ lease to state,
alot of people going to prison!!{ I neg going to get out!!
too dirty

Whole deal was just to get

QUESTIONS: billing out!!{ I should have not said what I did in
B.R. CtADVICE: { ~~the~~ ~~state~~ ~~the~~ ~~lease~~ ~~that~~ ~~JGT~~ ~~the~~ ~~company~~ }
{ ~~will~~ ~~take~~ ~~care~~ ~~of~~ ~~Peacock~~ }

ACTIONS FOR CLIENT:

ACTIONS FOR ATTORNEY:

DEADLINES:

LAW OFFICES
MITCHELL WILLIAMS SELIG & TUCKERTHE SUMMIT FARMER BUILDING
1771 E. RIVER AVENUE, ANAHEIM, CALIF. 92801

HOUSE

File	_____
Bring file	_____
Route to	_____
Send copies to	_____
DATE:	<u>4/2/87</u>
TIME:	<u>2:05</u>
ATTY:	<u>LM</u>
TICKLER:	_____ (Date) _____
Route file to Atty	_____
Date/Time:	_____
Return Call.	_____
Will Call Again	_____
Came by Call	_____

Checks Received in Connection with the 1985 Fundraiser

Name Appearing on Check	Check Amount	Check Date	Comments
Jim Guy Tucker (County Cable TV)	1,000	4/4/85	MG Counter Check Memo: "Contribution"
J.W. Fulbright	3,000	4/4/85	MG Cashier's Check #2496
Eugene or Alice Harris	1,000	4/10/85	/s/ Alice Harris
David Henley	1,000	4/4/85	MG Check
James Henley	1,000	4/3/85	MG Check
Larry Kuca	1,000	4/4/85	
Dean Landrum (Dene)	3,000	4/4/85	MG Cashier's Check #2498
James McDougal	3,000	4/4/85	MG Check /s/ Susan McDougal
Ken Peacock	3,000	4/4/85	MG Cashier's Check #2497
Brett Pharis	1,000	4/4/85	MG Counter Check
Robert or R.R. Randolph	1,000	4/4/85	/s/ Robert Randolph
Steven Smith (Smith Import, Inc.)	2,000	4/4/85	MG Check
Chris or Rosalee Wade	2,000	4/4/85	
R.D. Randolph (West Ark. Constr. Co.)	2,000	4/4/85	
Henry Hamilton	2,000	4/4/85	MG Check
Pat Harris	1,500	4/4/85	MG Check
John Latham	2,000	4/4/85	MG Counter Check Memo: "00154182"
Nathan Lubin	1,000	5/14/85	Rec'd 5/3/85 thank you ltr
TOTAL	31,500		

N.B.: In a Wall Street Journal article, Don Denton says he donated \$500.

MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

CASHIER'S CHECK a 2497

April 4, 1965

PAY TO THE ORDER OF Bill Clinton

THE SUM 3000 **DOLS** 00 **CTS**

DOLLARS

Susan Anderson

0000300000

002497 4282074216 7 001-117

MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

MADISON GUARANTY

CASHIER'S CHECK 2498

Payable to order of
Cash on Demand
1000 Bank, Madison 53701-1000
1000 Bank, Madison 53701-1000Payable to order of
Cash on Demand
1000 Bank, Madison 53701-1000
1000 Bank, Madison 53701-1000

April 4, 1995

PAY TO THE ORDER OF
Cash on Demand
1000 Bank, Madison 53701-1000
1000 Bank, Madison 53701-1000

\$ 3,000.00

THE SUM 3000 DOLLARS

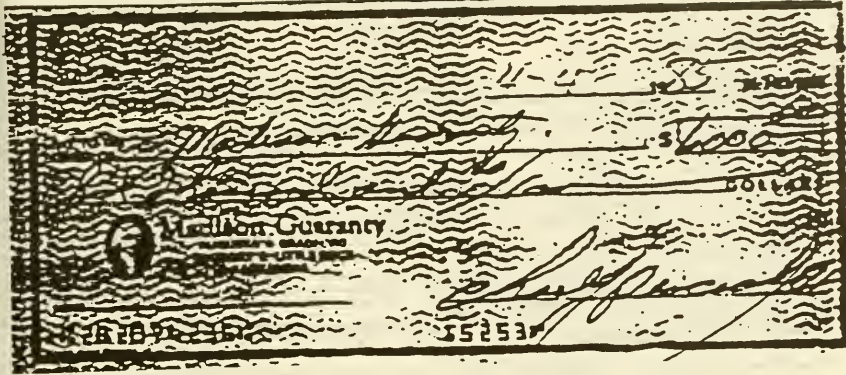
DOLLARS

Susan Anderson

⑆002698⑆ ⑆2820742361⑆ ⑆001-312⑆

0000100000

MADISON GUARANTY SAVINGS & LOAN ASSOCIATION ■ ■ ■
 PEACOCK, Charles III UCC-1 (All Conditions)
CASHIER'S CHECK LN 2461
 4 April 1985
 \$50,000.00
 FIFTY THOUSAND and NO/100- -
 DOLLARS
 JPBerg
 002461 1282074236 7 001-17- 0005000000



D-2

NO. 212A (11-57) NEW KNOX, AR. 72201 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally	Lender's Name and Address P.O. Box 1583 Little Rock, AR 72201 "You" means the lender, its successors and assigns	Loan Number Date <u>10/10/57</u> Maturity Date <u>10/10/60</u> Loan Amount <u>\$5,000.00</u> Repaid <u>0</u>
---	---	--

I promise to pay to you, or your order at your address above, the principal sum of five thousand and 00/100 Dollars \$ 5,000.00 plus interest from April 5, 1956 at the rate of 13.00 % per year until 10/10/60

I will pay this amount as follows:

(1) ☐ on demand ☒ on 24th day of each month, but if more is made on as agreed in item 17 ☐ on 10/10/57 and on the maturity date

(2) ☒ I will pay in installments of \$ 217.00 each beginning April 5, 1956 and continuing on the same day of each month in 24 year thereafter until 10/10/60 when a final payment of \$ 217.00 will be due

(3) ☐ (other) _____

PAYMENTS Each payment when made shall be applied first to unsecured finance charges with the remainder of each payment being applied to reduce the principal balance. The final payment may be more or less than the amount scheduled depending upon the payment record.

DELINQUENCY AND DEFAULT I agree to pay this note and interest to protect this note on the event of any default, including your reasonable attorneys' fees.

☒ I checked. I agree to make a late charge of \$ 5.00 per month on a payment which is not paid within 10 days of when it is due, up to a maximum of \$ 7.00.

☐ I checked. I agree to pay interest at the rate of _____ % per year on the balance of this note remaining unpaid after final maturity, including maturity by acceleration.

PREPAYMENT I may prepay this note in whole or in part at any time. However, any partial prepayment will not extend any later scheduled payments until this note is paid in full.

☐ I checked. I agree to pay a minimum interest charge of \$ _____ if I pay one loan off before you have earned this amount in interest.

THE PURPOSE OF THIS LOAN IS BUSINESS

ANNUAL PERCENTAGE RATE The rate of my credit is <u>13.00</u> %	FINANCE CHARGE The dollar amount the credit will cost me is <u>13.56-27</u>	AMOUNT FINANCED The amount of credit provided to me is <u>50,000.00</u>	TOTAL OF PAYMENTS The amount I will have paid when I have made all scheduled payments is <u>63,528.27</u>	I have the right to receive as the note an assignment of the amount financed.
My Payment Schedule will be:				YES - I want to make a prepayment. NO - Prepayment means an acceleration.
Number of Payments <u>24</u>	Amount of Payments <u>\$217.00</u>	When Payments Are Due <u>beginning April 5, 1956 on each succeeding year thereafter until 10/10/60</u>		

☐ This note is a demand note and I agree ☐ This note is payable on demand and all disclosures are based on an assumed maturity of one year.

Security: I am giving a security interest in ☒ the goods or property being purchased ☐ other description of other property.

☒ collateral security other than with you may also secure this loan.

☐ my default occurring and my right to the payment of money from you.

Late Charge: I will be charged _____ % of the amount of a payment which is more than _____ days late up to a maximum of \$ _____.

Prepayment: If I pay off this loan early I ☐ may ☒ will not have to pay a penalty.

☐ I agree to pay a refund of part of the finance charge.

UC-1 equipment

Information of Amount Financed

Type	Premium	Term	Signature (for insured)	Name of Insured
Credit Life			I want credit life insurance \$ _____	
Credit Disability			I want credit life disability insurance \$ _____	
Joint Credit Life			I want joint credit life insurance \$ _____	

Amounts paid to others on my behalf:

To Property Insurance Company	\$ _____	(1)
To Credit Life Insurance Company	\$ _____	(2)
To Disability Insurance Company	\$ _____	(3)
To Public Officers	\$ _____	(4)
	\$ _____	(5)
	\$ _____	(6)

Prepaid Finance Charge \$ 9,000.00

AMOUNT FINANCED (to be paid) \$ 50,000.00

Finance Charge (include prepaid) \$ 13,528.27

Total of Payments (1 + 2) \$ 63,528.27

Security: To secure the payment of this note and interest on the reverse side:

(1) I acknowledge and agree that you have the right to sell off this note against any assignment you have (even if not assigned) to any person or firm.

(2) You may cancel this proceeds for release of unsecured promissory on any other policy insuring me (including me) and you may apply the proceeds when I give you.

(3) ☐ I checked. This note is not further secured.

(4) ☒ I checked. This note is secured by a security UC-1 dated _____.

(This property should be described in the Trust-in-Lending disclosure above.)

(5) ☐ **Security Agreement** If I check, I give you a security agreement in the property described below. The property is given to you in this security, and the obligations in this agreement are defined on the reverse side of this form.

UC-1
(equipment located in White County)

☐ If checked, this security agreement (if filed) should be filed in the real estate records.

Legal Description _____

Record Owner (if not me) _____

Signature _____

Any person who signs without this disclosure does so to give pay a security interest in the property described above, but assumes no personal obligation to pay this note.

Signature for Lender - where necessary for filing this security agreement _____

Signature _____

I agree to the terms of the note and security agreement above including those on the other side of this form and acknowledge receipt of it. I will pay one loan off on today's date.

☐ I checked. The signature below was required as a condition of credit.

Signature _____

☐ I checked. The signature below was required as a condition of credit.

Signature _____

Simple Interest Note, Disclosure, and Security Agreement

Charles Peacock

Rt. 2

Bald Knob, AR 72010

4-5 19 07 11-1437284

PAY TO THE
ORDER OF*Madison Guaranty Title Co**\$38,900.00**Three thousand eight hundred and ninety dollars*

DOLLARS



Madison Guaranty

MEMBERS OF THE NATIONAL
MORTGAGE GUARANTEE BOARD*Charles Peacock*

⑆28 20742 151⑆

⑆01⑆-⑆53⑆

⑆0001894000⑆

E-5

TO: 39
 FROM: NB
 RE: RD Randolph's Visit

DATE: 4/11

- | | |
|---|---|
| <input type="checkbox"/> Immediate action | <input type="checkbox"/> No action required |
| <input type="checkbox"/> Draft reply for Governor | <input type="checkbox"/> Please see me |
| <input type="checkbox"/> Reply or act in 1 week | <input type="checkbox"/> File |
| <input type="checkbox"/> Prepare report | <input type="checkbox"/> For your information |
| <input type="checkbox"/> For comment | |

ARKS:

Mr. Randolph dropped by to see you this morning to talk to you about the Water Bill you vetoed. He said that he talked to you on Sunday morning. He wants to know if the veto is going to stand. He would like you to call Jim Guy Tucker about this. He said that he has a difficult time getting an answer from you. (He mentioned a meeting between you, Tucker and Jim McDougal a couple of years ago which involved \$33,000. This was pretty cryptic.) He seemed angry. Someone I think he prefers you, needs to call Tucker.

cc SB 4/15

see Jim Tucker
 call him

DKSN018008

1-1

MEMORANDUM

March 27, 1985

TO: John Lathan
FROM: Jim McDougal

Have Charles Peacock execute the \$50,000 note secured by the air conditioners. Have him carry a blank note and mortgage as well as a standard Offer and Acceptance form with him for he and his wife, Judy, to execute.

Have him resign from the Board, and do not fund the \$50,000 loan. Tell him I will call him about it Friday.

JM:ss

| MG 0000864 |

S-KCR03132

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, APRIL 25, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Ms. Betsey Wright would you please stand for the purposes of taking the oath?

[Witness sworn.]

The CHAIRMAN. Ms. Wright, we would be pleased to take any statement you might have at this time.

SWORN TESTIMONY OF BETSEY WRIGHT FORMER CHIEF OF STAFF FOR GOVERNOR CLINTON ACCOMPANIED BY: ALAN M. COHEN, ESQ. O'MELVENY & MYERS, NEW YORK, NY

Ms. WRIGHT. Thank you. I appreciate the opportunity to share some thoughts I scribbled down last night while trying to sleep.

I have now given nigh on to a jillion hours of testimony to this Committee, and most of the questions put to me were repetitive and duplicative. I find myself trying to assess why I am therefore here today. I have only come up with two possibilities so far:

One is that perhaps you have no confidence in Mr. Giuffra, the Chief Counsel of the Senate Banking Committee, who took my testimony. Any lack of faith in him is unfounded. He is incredibly thorough and tedious.

[Laughter.]

I noticed only one shortcoming of his. While both he and I experienced frustrations about details I couldn't remember from 10 and 12 years ago, he had frequent memory lapses about things he had asked me only hours before. I recognize that his days are overly full, stressful, and exhausting. All of our days 10 and 12 years ago were every bit as varied, full, stressful, and challenging, only we didn't come close to anything like a single focus.

My second theory is that perhaps my previous testimony was received sort of as an audition for this hearing appearance. That possibility is inconsistent with the Committee's goal of fact-finding and information gathering which is occurring in a limited timeframe. It, rather, indicates to me political motives for public display.

I have experienced cavalier and careless Committee procedures and testimony, a shedding of them, and I will give you two examples. First, Mr. Chertoff in questioning another witness falsely characterized a trip that I made to Little Rock as, "A trip to search for Whitewater records." I have never made such a trip. The second example is that an Associated Press reporter called me after being shown confidential documents provided this Committee under subpoena, a viewing he was given along with false and negative characterizations of the documents. I believe that this was done by a Member, or staff of the Committee, or the staff of a Member. These actions point to a lack of respect for procedures and more toward a political tack.

I am not going to challenge my subpoena to appear here, in spite of having already testified, because I know, though I am now a private citizen, some Members of this Committee would try to link my resistance to the President.

I want to share with you two of many observations I have to make about political figures.

The first is that in your duties, in the course of your duties and campaigning, you get to make more "friends" than most people, although you probably don't have more close personal friends than anybody else. The downside for you is that the mere association with troubled, or troublesome, or in trouble, or exaggerating friends lends itself to guilt by association, something which has probably happened unfairly to every Member of this Committee, and yet something which some Members of this Committee have tried to smear the President with day after day.

My second observation is that from time to time, political contributors give money which may have come from questionable sources. Senator D'Amato certainly had an experience with that in the not-too-distant past. Senator Dole is under scrutiny for it now. I don't believe even for a microsecond that either Senator had reason to know about the infractions committed by those contributors.

If there are problems about the source of money which Bill Clinton received at the 1985 fundraiser held at Madison Guaranty, he should receive the same benefit of the doubt Senator D'Amato and Senator Dole asked of the rest of us. They don't approve of infractions. Bill Clinton nor I approve of such infractions.

The 12 years I worked for Bill Clinton as his Campaign Manager, Chief of Staff, State Democratic Party Chair, Deputy Chair of the Presidential Campaign, were glorious years providing me rare opportunities to learn and to do. I am proud that I had a major role in a Clinton Administration which provided great and progressive leadership to the incredibly wonderful State of Arkansas, which is filled with fabulous Americans, all images this Committee's work obscures.

Having said all this, I thank you for allowing me to share these thoughts and I will now attempt to answer any further questions you have for me.

The CHAIRMAN. Thank you, Ms. Wright.

Let me say that I think you have made a number of very valid observations, but let me also assure you, first, that we do take depositions. We are going to try to cut down on them because of time and cost. It is not unusual to have someone come in and give depositions privately before we then take public testimony.

Second, there certainly has not been a conscious attempt by this Committee to in any way demean the State of Arkansas or its people. That just simply has not been.

Third, we are really attempting to get the facts as best we can. No one here that I am aware of has made any public statements as it relates to particular acts—fundraising activity, et cetera—that is part of the scope, and I don't believe as it related to the hearings that were conducted yesterday that anyone suggested that the President, then-Governor, was aware of what may or may not have been improper conduct on the part of fundraisers.

Certainly, the facts demonstrate some unusual activity—let's characterize that basically—that came, it would seem to me, from Mr. McDougal and a number of his employees, but I think you very aptly pointed out, and did a very admirable and a very credible job, in setting forth that this is a situation that no one should attempt to say, well, you see, this is something that the President himself was involved in, nor was that undertaken yesterday. But I certainly appreciate your sentiments and we'll see if we can't move this process quickly and expeditiously, gathering the facts that is our charge.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Wright, you were Chief of Staff to Governor Clinton for about 10 years? Right?

Ms. WRIGHT. Seven years.

Mr. CHERTOFF. From 1983 to 1990?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. You also ran Governor Clinton's campaigns during that period of time?

Ms. WRIGHT. In 1982, 1984, and 1986.

Mr. CHERTOFF. You did not run his campaign in 1990?

Ms. WRIGHT. I did not.

Mr. CHERTOFF. When you were his Chief of Staff, pretty much every piece of paper that came to him crossed your desk first; is that right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Do you think there's any area of his activities as Governor about which you were unaware?

Ms. WRIGHT. It is unlikely. There have got to be some things I was unaware of.

Mr. CHERTOFF. But you made it your business to keep track—

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. —of his activities?

Ms. WRIGHT. That was my job.

Mr. CHERTOFF. Part of your job, in fact, was to look out for him; right?

Ms. WRIGHT. Surely.

Mr. CHERTOFF. You want to protect his interests; right?

Ms. WRIGHT. Surely.

Mr. CHERTOFF. You want to protect his reputation?

Ms. WRIGHT. Surely.

Mr. CHERTOFF. You want to see that his agenda gets carried out?

Ms. WRIGHT. Surely.

Mr. CHERTOFF. That was all part of your job description?

Ms. WRIGHT. Surely.

Mr. CHERTOFF. Now, Mr. McDougal also had been a member of the Governor's staff in his first term; right?

Ms. WRIGHT. That's—Yes, sir.

Mr. CHERTOFF. You knew Mr. McDougal?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Mr. McDougal was a campaign contributor on occasion; right?

Ms. WRIGHT. Rarely.

Mr. CHERTOFF. He held a 1985 fundraiser; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. That was a fundraiser that was designed to retire a campaign debt that the President had taken out personally the previous year?

Ms. WRIGHT. It was a fundraiser to raise political money.

Mr. CHERTOFF. Part of which was designed to retire an outstanding debt——

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. —the President had incurred the previous year; is that right?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. Now, you also knew Mr. McDougal had other relationships with Governor Clinton; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. You knew he had a social relationship with him?

Ms. WRIGHT. I am unaware that he did.

Mr. CHERTOFF. You knew that they were business partners?

Ms. WRIGHT. I am aware that the Clintons were investors in a one-business development operation with him.

Mr. CHERTOFF. And that's called "Whitewater Development"?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. How did you first hear about that?

Ms. WRIGHT. I oversaw the filing of the Governor's annual disclosure forms, and that was always listed, and I did, I guess, on the first one ask him what Whitewater Development was, and he said it was a real estate investment with Jim McDougal.

Mr. CHERTOFF. Now, of course, the forms themselves don't indicate on their face that Jim McDougal was involved in the investment; right?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. All they show is an investment in the Whitewater Development Corporation?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. The forms also don't show how much money each of the investors in Whitewater contributed; right?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Did you ever find out how much money each investor was contributing?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Did you ever ask?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Now, I assume as part of your job duties, again, in assisting the Governor and looking out for his interests, was to make sure he didn't get himself into any situations that created either actual or apparent conflicts of interest; right?

Ms. WRIGHT. Probably more often to make sure other people did not put him into those situations.

Mr. CHERTOFF. Because you understand integrity is an important principle in Government; right?

Ms. WRIGHT. It certainly is.

Mr. CHERTOFF. You were committed to that?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. So you wanted to make sure that he didn't get into situations where someone might question his integrity; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. And——

Ms. WRIGHT. He—that's not something I imposed upon him. He was very concerned and committed to avoiding any improper appearances.

Mr. CHERTOFF. But in your own responsibilities, you understood that was a significant part of your responsibility to make sure that nothing arose that would put the Governor in a position where he would have a conflict of interest; right?

Ms. WRIGHT. Yes, but——

Mr. CHERTOFF. Now, you knew that Mr. McDougal was in the 1980's, among other things, a banker and savings and loan executive; right?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. In fact, is it fair to say that Mr. McDougal was, at least in the period of the early 1980's, a pretty prominent figure and a pretty noticeable figure around Little Rock?

Ms. WRIGHT. I think that's a slight exaggeration.

Mr. CHERTOFF. He was a colorful figure?

Ms. WRIGHT. He was colorful to people who knew him and saw him, but not everybody did.

Mr. CHERTOFF. What was Mr. McDougal's reputation in the early 1980's?

Ms. WRIGHT. I can only speak for my impressions of him, that he was a Yellow Dog Democrat; that he was a story-teller; that he had a great appreciation for history; and that he seemed to be increasingly personally shakey—perhaps ill.

Mr. CHERTOFF. This was in the early 1980's he seemed ill to you?

Ms. WRIGHT. Well, I—I didn't—I went to Arkansas—I don't know that I met him until—yeah, early 1980's; yes.

Mr. CHERTOFF. When you first heard from Governor Clinton about this Whitewater investment, you understood that McDougal, because he was an executive, or actually the owner of a bank and later of a savings and loan, would have business with the State of Arkansas; right?

Ms. WRIGHT. What type of business?

Mr. CHERTOFF. Well, the State regulates banks, doesn't it?

Ms. WRIGHT. State banks.

Mr. CHERTOFF. Does the State regulate savings and loans?

Ms. WRIGHT. State savings and loans.

Mr. CHERTOFF. Do you have an understanding that in his capacity first as the owner of Madison Bank and Trust, and then Madison Savings & Loan, Mr. McDougal might have business with the State regulators?

Ms. WRIGHT. I don't know that I thought of it. I think all financial institutions did; yes.

Mr. CHERTOFF. Did you ever discuss with Governor Clinton taking steps to make sure that there was some kind of separation between any decisions the Governor might make in Mr. McDougal's case, or between the Governor and any decision that had to be made with respect to Mr. McDougal's interests?

Ms. WRIGHT. I can see no reason why he would.

Mr. CHERTOFF. Did you ever ask whether the nature of Mr. McDougal's business relationship with the Governor involved money moving back and forth between them?

Ms. WRIGHT. Will you ask me that again?

Mr. CHERTOFF. I'll rephrase the question, Ms. Wright. When you discussed with the Governor the Whitewater investment, what did the Governor tell you was the nature of the investment?

Ms. WRIGHT. That it was a real estate investment.

Mr. CHERTOFF. Did the Governor tell you he had put money into the investment?

Ms. WRIGHT. No. I think it was inherent to the description of it and the fact that we listed it on the disclosure form.

Mr. CHERTOFF. Well, did you list on the disclosure form the amount of money that the Governor put into the investment?

Ms. WRIGHT. The disclosure forms didn't call for that.

Mr. CHERTOFF. Did you ask the Governor whether Mr. McDougal was putting money into the investment?

Ms. WRIGHT. I didn't. I——

Mr. CHERTOFF. There was nothing——

Mr. COHEN. Excuse me. She hasn't finished her answer.

Mr. CHERTOFF. I'm sorry. Go ahead.

Ms. WRIGHT. It was of no concern to me what Mr. McDougal's business was.

Mr. CHERTOFF. Now after you first learned about this investment, did you have other discussions with the Governor over time concerning his business relationship with Mr. McDougal?

Ms. WRIGHT. [Consults counsel.]

I am certain I did. Usually when it was brought up by other people. I think, Mr. Chertoff, the point that I have not inserted into my answers of your questions but which is inherent to your questions is that we did not treat Jim McDougal with any more deference or differently than any other businessman.

Mr. CHERTOFF. My question was a little different, Ms. Wright. We will get to the treatment of Mr. McDougal in the second place, but first I want to deal with the issue of the nature of this business relationship. Did you come to learn during the 1980's that there was a debt that Mr. Clinton shared with Mr. McDougal for the initial investment in Whitewater; that there was liability to a bank on that initial investment?

Ms. WRIGHT. I was aware that the Clintons regarded their investment in Whitewater as a losing proposition and one which they

were anxious to be extricated from during the entire time I was there.

Mr. CHERTOFF. You knew that in the early 1980's?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. From whom?

Ms. WRIGHT. From the Clintons.

Mr. CHERTOFF. So the Clintons told you in the early 1980's that they regarded Whitewater as a losing investment and they wanted to be extricated from it?

Ms. WRIGHT. Either that, or I inferred it from a tone of voice, or from a conversation that I was present for. I don't know whether they specifically said that to me, but I very much had that impression from——

Mr. CHERTOFF. Did they tell you that, because it was a losing investment, there was difficulty in making payments to the bank on the loans on the investment?

Ms. WRIGHT. You know, I don't think I ever focused that they had a responsibility. My understanding was that Mr. McDougal was in charge of running the company, and that the making payments, paying taxes, filing reports, were his responsibility. And there was an occasion or two over the years when I became concerned that he was not doing that, and I'm certain that if I was concerned, they were doubly concerned.

Mr. CHERTOFF. Well, how did you become concerned that Mr. McDougal wasn't taking care of the payments on the Whitewater investment? How did you come to be aware of that?

Ms. WRIGHT. I believe—I'm not going to be able to remember specifics—a lot of these are impressionistic—but I believe that in fact once there was a listing in a newspaper about a delinquent tax bill for the company. I believe that the Clintons once were notified about a late payment on a bank loan by the company.

Mr. CHERTOFF. And on each of these occasions, you got the impression from the Clintons that they just wanted to get out of the investment? Is that right?

Ms. WRIGHT. Yes, that they viewed it as a losing proposition. Now, I have to say to you that I think most of Jim's friends were very concerned about him. And it's always very difficult for people who are concerned for friends how you deal with being supportive of them, and hoping that they get better, versus taking care only of yourself and describing whether or not that is merely selfish. So it was not so easy as just shut the books.

Mr. CHERTOFF. So in the early 1980's, your understanding is, the Clintons felt this was a losing investment; they wanted to get out of it; but they also felt that Mr. McDougal was a little mentally unstable and they were concerned about not doing anything to injure him? Is that your testimony?

Ms. WRIGHT. Well, I don't know that I would describe it as "mentally unstable." It became obvious in later times that this was a part of the illness, but I think he had—he just seemed to be ill.

Mr. CHERTOFF. Did you know during this period of time that Mrs. Clinton and her law firm were representing Mr. McDougal and Mr. McDougal's savings and loan?

Ms. WRIGHT. During which period of time?

Mr. CHERTOFF. In the early 1980's.

Ms. WRIGHT. No, sir, I don't believe I did.

Mr. CHERTOFF. The Governor never said to you, "Listen, Betsey, you ought to be aware that Hillary's law firm is doing some business, or doing some legal work for Madison Savings & Loan"?

Ms. WRIGHT. In the early 1980's?

Mr. CHERTOFF. Meaning up until 1986. The first half of the 1980's.

Ms. WRIGHT. It is very difficult, as I'm sure you can appreciate, Mr. Chertoff, for me to separate what I knew contemporaneously from what I learned or dealt with or knew subsequently. So obviously I'm aware that the Rose Law Firm represented Madison.

Mr. CHERTOFF. I don't want to talk now about what you learned during the campaign, or what you learned in recent years. I want to know what you were told by the Governor or Mrs. Clinton at the time while you were Chief of Staff, while you were so-to-speak the gatekeeper with responsibility for monitoring all the paper in and out of the Governor's office, what you knew at that time and what you were told by the Clintons about the nature of their relationship with Jim McDougal.

At the time in the period before mid-1986, before Mr. McDougal was kicked out of the savings and loan, did you know from the Clintons that Mrs. Clinton's law firm and Mrs. Clinton herself were doing work for Jim McDougal's savings and loan?

Ms. WRIGHT. I don't think I did. I don't think I did. But back to the nature of their relationship——

Mr. CHERTOFF. I just want to make sure we have this answer. So you were not told, as far as you can remember at the time——

Ms. WRIGHT. The problem with your questions is that they come on the tail end of a long statement of other points, and it is difficult for me to respond to your statements and also your questions.

Mr. CHERTOFF. I will be real sharp. The question is: At the time, were you told by the Governor or Mrs. Clinton that Mrs. Clinton and her law firm were doing legal work for Jim McDougal and his savings and loan?

Ms. WRIGHT. I don't believe so, Mr. Chertoff.

Mr. CHERTOFF. Did there ever come a point in time, again keeping your attention focused on the early to let's say mid-1980's, that you became concerned about this business relationship between the Clintons and the McDougals spilling over or touching upon any of the official activities that the Governor or his appointees were undertaking?

Ms. WRIGHT. Well, I mean I know that this Committee has dealt with a note that I wrote to the Governor at one point, and I assume that that's——

Mr. CHERTOFF. No. Ms. Wright, I think your counsel will advise you that you are better off not assuming or trying to guess where I am going, but just concentrate on the question.

My question is: At some point during the early to mid-1980's, did you become aware of or concerned about any intermingling between the private business relationship that Mr. McDougal and the Clintons had and any official activities undertaken by the State of Arkansas?

Mr. COHEN. Mr. Chertoff, I think that is precisely the question she was trying to answer, and in doing so with respect to a particular document that evidences that concern.

Mr. CHERTOFF. Can you answer the question, Ms. Wright?

Ms. WRIGHT. It's a whole lot of questions, isn't it?

The CHAIRMAN. Let's start it again. Mr. Chertoff, try and narrow it so that the witness can be responsive without a statement.

Mr. CHERTOFF. Do you know an individual named Marlin Jackson?

Ms. WRIGHT. I do.

Mr. CHERTOFF. Marlin Jackson was the Bank Commissioner in 1985?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. In Arkansas.

Ms. WRIGHT. I don't remember the exact years, but he was the Bank Commissioner, yes.

Mr. CHERTOFF. And he was appointed by Governor Clinton?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. He was a friend of Governor Clinton's?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. He was a former banker himself; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Now did you know in 1985, that as part of this Whitewater investment the Clintons had taken out a personal loan to finance, I guess, a display home on a particular lot up at Whitewater?

Ms. WRIGHT. I didn't know the purpose of the loan. I did know that they had taken out a loan. After the fact, I learned this, that they had taken out a loan which was involved in helping cover some of the financial development of Whitewater Development.

Mr. CHERTOFF. And that again would be connected with their business relationship with Mr. McDougal; right?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. When did you first learn about that loan?

Ms. WRIGHT. I don't know when I first learned about it. My first conscious memory of knowing about it was when the Bank Commissioner notified us I think that the loan was delinquent.

Mr. CHERTOFF. Now that's Mr. Jackson, who is the Bank Commissioner?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Mr. Jackson notified you that the loan was delinquent?

Ms. WRIGHT. I think it was at his bank, was it?

Mr. CHERTOFF. Well, it was at his former bank.

Ms. WRIGHT. Yes.

Mr. CHERTOFF. When he was serving as Bank Commissioner, he notified you that the Clintons' loan was delinquent?

Ms. WRIGHT. I believe that's correct; yes.

Mr. CHERTOFF. Did he tell you how he came to learn about that?

Ms. WRIGHT. I assume he learned it from his bank.

Mr. CHERTOFF. Was it your understanding from Mr. Jackson, the Bank Commissioner, that his old bank had called him up and complained about the fact that there was a problem with this personal loan the Clintons had taken out?

Ms. WRIGHT. Yeah.

Mr. CHERTOFF. Then what did you do after Mr. Jackson brought this problem to your attention?

Ms. WRIGHT. Well, I don't remember exactly how it was brought to my attention. Obviously, then the only goal I had was to make certain that the accounts were brought up to date.

Mr. CHERTOFF. Did you do that?

Ms. WRIGHT. I mean, I didn't pay the bills; no, sir.

Mr. CHERTOFF. Did the Governor pay the bill?

Ms. WRIGHT. I don't know.

Mr. CHERTOFF. And did you talk to the Governor about paying the bill?

Ms. WRIGHT. I was satisfied that attention had been given to it to take care of it; yes.

Mr. CHERTOFF. Well, how was it taken care of?

Ms. WRIGHT. I don't know that. I didn't handle their private finances, Mr. Chertoff. They were too paltry.

Mr. CHERTOFF. Wasn't this taken care of by the Bank Commissioner writing an official letter on Bank Commissioner stationery telling the bank that they should extend the loan?

Ms. WRIGHT. I know that I received—that in my deposition that your staff showed me a letter that Mr. Jackson had written on official bank stationery, and I don't remember who it was to or from, which had to do with the Clintons' loan, or the Whitewater loan, or whoever's loan it was. The first thing that struck me was how inappropriate for this to be written on official State letterhead.

Mr. CHERTOFF. Because we will agree that, as you just said, this issue involving the Clintons' private loan was a matter of private business; right?

Ms. WRIGHT. Absolutely.

Mr. CHERTOFF. Not the kind of thing that a State official would take an official interest in on behalf of the Governor; right?

Ms. WRIGHT. The letter should not have been on State letterhead, but I'm not certain what Mr. Jackson's ongoing relationship to that bank was. I'm not certain that he was extricated from that bank.

Mr. CHERTOFF. Well, let me—

Ms. WRIGHT. I don't remember what the—

Mr. CHERTOFF. Let's put the letter up.

The CHAIRMAN. Could we see that the witness has a copy of this, please?

Mr. CHERTOFF. Yes. We are going to hand her a letter dated November 1, 1985, on Arkansas State Bank Department stationery, directed to Charles Campbell, the Vice President of the Security Bank, and signed by Marlin Jackson.

Mr. COHEN. Mr. Chertoff, the "Confidential" stamp I take it was not on the letter originally? This is just for your records?

Mr. CHERTOFF. That's right. Just to be clear, all the "Confidential" stamp and the little numbers at the bottom with DKRT or DKSN were added afterwards.

Now, Marlin Jackson is the Bank Commissioner about whom you told us a moment ago from whom you learned that there was a problem with respect to the Clintons' personal loan on this White-water lot. Correct?

Ms. WRIGHT. That is correct. And this letter indicates what my rough impression in my mind was, which was that it was Mr. McDougal's responsibility to be making those payments.

Mr. CHERTOFF. And was it the responsibility of the Bank Commissioner to write a letter on his official stationery and sign it as Bank Commissioner directing that there should be an approval of an extension agreement?

Ms. WRIGHT. I have answered that question. This is not an appropriate subject for official bank stationery. It may have been appropriate in whatever his relationship to that bank was for him to have written that letter, but not on Bank Commissioner stationery.

Mr. CHERTOFF. Is this the way this problem involving the loan got resolved?

Ms. WRIGHT. I don't know, Mr. Chertoff. I have known, and obviously during the 1992 campaign a lot of this came up, and I have an incredible ability to not retain the details of the ins and outs of Whitewater.

Mr. CHERTOFF. And did you discuss this letter with Governor Clinton?

Ms. WRIGHT. I don't know if I did or not. I honestly don't.

Mr. CHERTOFF. So you may have?

Ms. WRIGHT. I may have, but I wouldn't have discussed the subject matter. I may have made some snide comment about Marlin using the stationery, and I probably made a point of pointing it out to Commissioner Jackson. I always did that kind of thing. That is why he called me "The Baroness"—what did he call—I think he called me "The Baroness." Some name.

Mr. CHERTOFF. At this point did you say to the Governor after this issue involving the Governor's personal loan, maybe you ought to sever your business relationship with McDougal?

Ms. WRIGHT. No, sir. If there were difficulties in a private investment that they had, it didn't—just so those difficulties didn't impede his duties as Governor, or the appearances of his performances, it wasn't my responsibility to deal with financial difficulties of investments.

Mr. CHERTOFF. You didn't think this letter having the Bank Commissioner intervene in his official capacity to help the Governor deal with a personal loan, you don't think this created an appearance problem?

Ms. WRIGHT. I do not believe that—while Marlin Jackson wrote this letter on official stationery, I do not believe that he wrote this letter ordering as Bank Commissioner an extension of a loan. Marlin Jackson wrote this letter, the subject matter of this letter, the content of this letter, in his capacity with that bank, not as Bank Commissioner.

Mr. CHERTOFF. What does it say at the bottom? "Marlin D. Jackson," former officer of the Security Bank? Or "Marlin D. Jackson, Bank Commissioner"?

Ms. WRIGHT. I have answered that question, Mr. Chertoff. I do not believe that the substance of this letter was in his official capacity, and it should not have been on letterhead.

Mr. CHERTOFF. Now the next year in mid-1986, Mr. McDougal got kicked out of his savings and loan; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. And that was because of a problem with the examiners; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Then there came a point at that juncture where you communicated with the Governor about whether he still held any Whitewater stock. Do you remember that?

Ms. WRIGHT. I do.

Mr. CHERTOFF. Let me show——

Ms. WRIGHT. I certainly remember it now because you have brought it back to my memory.

Mr. CHERTOFF. Let me show you a copy of a routing slip dated 7/14 from BW to Gov. We are going to put it in front of you and see if you recognize this.

Ms. WRIGHT. I do, sir.

Mr. CHERTOFF. Now there is a little kind of reverse checkmark where it says "Gov." I take it that was Mr. Clinton's practice, when he had read a memo, he would check it off that way?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. And it says in your handwriting, "Whitewater stock (McDougal's company). Do you still have? Pursuant to Jim's current problems. If so, I'm worried about it." Now did you have a discussion with the Governor about this?

Ms. WRIGHT. No. I think this piece of paper was probably the total of our dialogue on it.

Mr. CHERTOFF. Then he says—can you read his handwriting at the bottom where he gives you a response?

Ms. WRIGHT. It says, "No, do not have any more. B."

Mr. CHERTOFF. "B" would be Mr. Clinton?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. So in 1986 shortly after Mr. McDougal's problem getting thrown out of the savings and loan, the Governor told you he didn't have that investment anymore; right?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. When did you learn that in fact it was incorrect?

Ms. WRIGHT. I think it was about the same time they learned it was incorrect. And I know that—here's the way it impacted my responsibilities, Mr. Chertoff.

In filing the annual disclosures, I know that there was a year that we didn't list Whitewater because they believed that they were no longer in that investment. And then the message for me when we learned that they were still attached to it was that I had to put it back on the disclosure form. So that is the way I remember learning it.

Mr. CHERTOFF. Did either of the Clintons tell you that they had actually been under the impression that somehow they had sold their stock or their interest back to Mr. McDougal?

Ms. WRIGHT. You have the Governor's note to me right in front of you, also.

Mr. CHERTOFF. Would it surprise you to learn that, in fact, the Clintons specifically declined a request or a suggestion by Mr. McDougal that he was prepared to buy their stock back?

Senator DODD. Mr. Chairman.

The CHAIRMAN. Yes.

Senator DODD. Are we keeping an eye on the clock?

The CHAIRMAN. How much time is left?

COMMITTEE STAFF. About 4 minutes, Mr. Chairman.

The CHAIRMAN. OK.

Senator DODD. Four minutes left?

The CHAIRMAN. Yes.

Mr. CHERTOFF. Would it surprise you to learn that, in fact, in 1986 the Clintons had specifically refused to sell McDougal back the stock?

Ms. WRIGHT. Do you know that?

Mr. CHERTOFF. Yes.

Mr. COHEN. Are you asking her whether she knew that at the time?

Mr. CHERTOFF. I am asking you, does that surprise you? Is that inconsistent with what you were being told by the Clintons in 1986?

Ms. WRIGHT. Well, those are two different questions, sir. I understood, first, that they were not in Whitewater. I then understood later that they were. Your question about whether or not Jim McDougal offered to sell them, I have no idea whether that is true or happened or—and I have no recollection of any contemporaneous knowledge of such an offer.

Mr. CHERTOFF. Let's put that to one side. You understood that before 1986 the Clintons wanted to get out of the investment. Now, you're telling us you understand that finally, probably in mid-1986 according to this note, Governor Clinton finally says, "Yep, we are out of the investment." Then you say later you learned, no, they're actually back in the investment. Did you say to Governor Clinton, why on earth did you get back into this investment when you got out of it?

Ms. WRIGHT. It wasn't "back in." They were mistaken in believing that they were out.

Mr. CHERTOFF. So Governor Clinton told you——

Ms. WRIGHT. I don't know the ins and outs of the investment. I don't know the terms of it. I don't know the components of it. I never wanted to know, and I don't even care now.

Mr. CHERTOFF. So when Governor Clinton said to you, we made a mistake, we really didn't sell the stock, you didn't push that any further? Is that your testimony?

Ms. WRIGHT. I don't think he ever said such a thing to me.

Mr. CHERTOFF. Well, what did he say to you when he finally told you, or indicated to you that you would have to now re-include Whitewater on his disclosure statements?

Ms. WRIGHT. I don't remember.

Mr. CHERTOFF. See, the question I have really boils down to this, Ms. Wright. Since the financial record is abundantly clear that the Clintons never did dispose of this investment until 1992 in December after the Presidential election, it is just baffling why the Governor would indicate to you in 1986 when Mr. McDougal's problems suddenly burst out, that he was out of the investment when it is plainly contrary to what the record shows?

Ms. WRIGHT. It isn't baffling to me, Mr. Chertoff. He misunderstood a situation.

Mr. CHERTOFF. He misunderstood whether he owned something or not? Is that your testimony?

Ms. WRIGHT. I think that there's nothing about the Whitewater Development Corporation that seems to be so straightforward as owning or not. I think it was complicated, and convoluted, and whatever it was I think he had a misunderstanding or misimpression about it.

Mr. CHERTOFF. I wanted to just ask you quickly, before my time runs out, about an episode that occurred shortly after you left as Chief of Staff in 1990. You became aware recently that in 1990 during the campaign there was an issue concerning a cash withdrawal from the Perry County Bank of a large sum of money. Is that correct? You saw it in the papers?

Ms. WRIGHT. I was aware of that, yes.

Mr. CHERTOFF. That was when Mr. Lindsey was Campaign Manager; right?

Ms. WRIGHT. No, I don't believe he was the Campaign Manager. He was the Treasurer.

Mr. CHERTOFF. You were not involved in that campaign?

Ms. WRIGHT. I was not.

Mr. CHERTOFF. You do, however, have the opinion that based on what you have read concerning the amount of money withdrawn, that it was an excessive amount and curious in manner. Is that correct?

Ms. WRIGHT. Yes. In my previous testimony I was asked what my reaction to it was, and I said I thought it was excessive and curious.

Mr. CHERTOFF. In fact, you received a call from one of the campaign workers who was involved in withdrawing money, didn't you?

Ms. WRIGHT. I'm sorry?

Mr. CHERTOFF. Did you get a telephone call from one of the women, one of the volunteers in the 1990 campaign concerning the withdrawal of that money?

Ms. WRIGHT. Oh, much later. Yes.

Mr. CHERTOFF. Recently?

Ms. WRIGHT. Well, since these investigations got started.

Mr. CHERTOFF. In the last couple of years?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. What did she tell you?

Ms. WRIGHT. She told me that an FBI agent had been by to ask her about picking up the cash at the bank, and that Bruce Lindsey had told her that if anybody ever gave her trouble about it, just refer them to him and he would handle it; that it wasn't anything to worry about, and wasn't her responsibility.

Mr. CHERTOFF. So she told you that she had been given standing instructions from Mr. Lindsey that if anybody ever said something to her about it, she should call Mr. Lindsey?

Ms. WRIGHT. Refer them to him.

Mr. CHERTOFF. And why did you get called on this?

Ms. WRIGHT. Because I think she, like a lot of people in Arkansas, assume that these Arkansans in the White House got exulted positions and it might take forever to get through to them, and she had a lot of confidence in me to pass the message on more efficiently than she could.

The CHAIRMAN. It's time.

Mr. CHERTOFF. We'll revisit when we return.

The CHAIRMAN. We have gone several minutes over. I appreciate the indulgence of my colleagues on the other side, and we will certainly afford them the same time.

Senator Dodd.

OPENING COMMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, I will turn to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Ms. Wright.

Ms. WRIGHT. Good morning.

Mr. BEN-VENISTE. Let me start with a matter that Mr. Chertoff spent some considerable time on. That is the letter on official State Bank Department stationery that was referred to from Mr. Marlin Jackson. Now, you have indicated quite clearly that you thought it was inappropriate for that letter requesting an extension to be written on official stationery.

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. In fairness to Mr. Jackson, the testimony that he provided to this Committee, which was in a deposition dated February 12, 1996, indicates at page 63, Mr. Chertoff, in case you are interested in the accuracy of what is going on here, that his secretary typed this letter; that she erroneously typed it from dictation on official stationery because it was a matter that dealt with a bank; that he did not review the letter or sign it himself; that is not his signature on the document; and that it was an error that was regrettable.

Now, you have indicated that in your view this was no direction by the official State agency to extend a loan; correct?

Ms. WRIGHT. Correct. And I am certain that the recipient bank understood that, also, because they knew Mr. Jackson very well.

Mr. BEN-VENISTE. Now let me go on to the question regarding Mr. Clinton's understanding of the Whitewater investment and the events that occurred in 1985 and 1986. Did there come a time, to the best of your recollection, when the Governor and you learned that there was some tax delinquency associated with Whitewater which had been published in a newspaper?

Ms. WRIGHT. Yes, sir. That is a vague impression in my mind. I remember no specifics about it, though.

Mr. BEN-VENISTE. Let me refer to a letter which undoubtedly you did not receive, but it may refresh your recollection as to time. It is DKSJ 2794. It's dated January 20, 1986, and it is a letter to Ms. Janie Sanders, the Collector at the Marion County Courthouse. I presume that's a tax collector, in Yellville, Arkansas, and it is from Jim McDougal. It says:

I am having a heck-of-a hard time keeping up with whether the people who owe us on the various Whitewater tracks are keeping their taxes paid. If there is any way that you can advise me as to any delinquencies in the Whitewater Subdivision? I will greatly appreciate it.

Now does that help you with respect to the timeframe in which there was a publication in the local Yellville newspaper of all the individuals who were delinquent in their taxes?

Ms. WRIGHT. It should help me. I'm hopeless when it comes to—all those years blend together.

Mr. BEN-VENISTE. OK. Well, this was January 1986. Do you recall that with respect to tax delinquencies, that this was a matter

which a public official, not to mention the highest executive in the State of Arkansas, would be sensitive to, having an investment in which he would be associated in the minds of individuals in that area being noticed as a tax delinquent?

Ms. WRIGHT. I wouldn't work for a politician who wasn't sensitive to that, Governor Clinton was exceedingly sensitive to that.

Mr. BEN-VENISTE. Then there came a time, as is referenced in Exhibit DKSJ 13309 which we will provide to you and put up on our display machine—now this is dated August 14th, and we understand—I'm sorry, July 14th, and this is 1986—Mr. McDougal is just at the point of being removed from his position at the Madison Guaranty Savings & Loan—

Ms. WRIGHT. He had just been removed.

Mr. BEN-VENISTE. You are writing a memo to the Governor alerting him to the fact that the Whitewater stock situation could be a problem because of Mr. McDougal's difficulties, and you asked him about the Whitewater stock. And Mr. Clinton replied to you his belief that he doesn't have it anymore.

Now, we have some guidance from a publication which has received some attention in the press entitled "Blood Sport" at page 132, where it is reflected that Mr. McDougal, cognizant of all the problems surrounding this, suggested to Mr. Clinton that he just take him out of the investment. It's a loser, and that Mr. Clinton could simply extinguish his relationship in that investment with Mr. McDougal. And that Governor Clinton said, "Well, go ahead and do it; just run it by Mrs. Clinton." Are you familiar with that?

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. And—

Ms. WRIGHT. I'm familiar with that—

Mr. BEN-VENISTE. Part of it.

Ms. WRIGHT. —part of the book.

Mr. BEN-VENISTE. Right.

Ms. WRIGHT. I have little faith in the credibility or the sources of that book.

Mr. BEN-VENISTE. I understand. But in terms of the notion that Governor Clinton was under the impression that he was out of this investment as of July 1986, the concept of Mr. McDougal making that offer to him and the Governor believing that it had been executed or implemented is reflected in what the Governor responded as to your inquiry about the Whitewater stock? Is that fair to say?

Ms. WRIGHT. Well, I know that the Governor did not believe they were involved in it anymore.

Mr. BEN-VENISTE. Let's talk for a moment about the 1985 fundraiser. In the 1985 fundraiser, a number of checks were received. If I understand your initial statement and testimony, that funds were applied both to outstanding campaign debt and were to be applied prospectively for future campaign uses. Is that correct?

Ms. WRIGHT. And political uses. We used the campaign fund to buy ads in the Young Democratic Convention Bulletin, things like that.

Mr. BEN-VENISTE. Now as far as the campaign was concerned, yesterday we referred to two thank-you letters that were written following the fundraiser to individuals who, according to our witness yesterday, were not the actual donors to the campaign.

Mr. Peacock came here and testified that he, for reasons of his own, wrote those checks out in the name of his son and another individual. We produced documents that show that the campaign wrote letters to those individuals, the son and the other individual, thanking them for the contribution.

There was no way for you to know, was there, that Mr. Peacock was the ultimate donor in connection with those contributions?

Ms. WRIGHT. I don't know how we would have.

Mr. BEN-VENISTE. I would like to give you the opportunity to discuss not only that allegation but the notion which was the premise of yesterday's hearing, but which disappointingly for those who adhere to the premise was not fleshed out by the facts or the testimony or the documents developed in that hearing, that this fundraiser was supposedly a quid pro quo for leasing State office space in property controlled by Mr. McDougal or his savings and loan. Is there any validity to that assertion?

Ms. WRIGHT. It is a preposterous assertion. The lease on the building occurred long before the fundraiser. There just was no connection between the two.

Senator DODD. Pull that microphone a little closer to you.

Ms. WRIGHT. I'll just get closer to it, thanks.

Mr. BEN-VENISTE. I'm sorry. We had difficulty hearing your answer. Could you repeat it, please? It is a preposterous assertion to link the lease and the fundraiser. The lease occurred long before the fundraiser.

Senator DODD. How much longer? Do you remember?

Ms. WRIGHT. It was a year or so, I think.

Mr. BEN-VENISTE. Now there was also——

Ms. WRIGHT. We even had a campaign in between where we really needed money.

Mr. BEN-VENISTE. I would like to turn your attention to another matter involving Mr. McDougal. This was the memo that was sent to Mr. Bratton by Ms. Bassett involving a "heads-up" as it were, on Mr. McDougal's current difficulties.

We have heard testimony from the bank regulators who indicated that they advised the board of directors of Madison Guaranty Savings & Loan well in advance of the time that the auditors came in that it was their intention to move Mr. McDougal and take other regulatory action. The testimony from the Commissioner of Securities was that she advised Mr. Bratton of this information, that there would be regulatory action associated with Madison Guaranty Savings & Loan. Was that, in your view, an appropriate thing for a Securities Commissioner to do?

Ms. WRIGHT. I insisted that all agency and department heads keep us apprised of events that would become public, or which impacted our responsibilities for State monies, or that the Governor needed to know about in order not to be blindsided; that we always be told in advance, if at all possible. It was part of their job. The CEO of a company is not going to want to read in the newspaper about something happening in one of the divisions.

Mr. BEN-VENISTE. The CEO of the State, as it were, the Governor of the State, you believed it was appropriate——

Ms. WRIGHT. Oh, it was. It was a requirements of ours to be kept apprised of major developments. Yes.

Mr. BEN-VENISTE. Was there a concern, in terms of protecting Governor Clinton, against being blindsided by a request that might be made by Mr. McDougal?

Ms. WRIGHT. There were myriad reasons for this heads-up. Obviously, we did not want Mr. McDougal to blindside the Governor. We didn't want to be unaware of a press question. And if we had State monies in there, we had a responsibility to the taxpayers.

Madison Guaranty was one of several savings and loans in the State of Arkansas in great crisis, as across the country. This was of great concern to the Governor. Madison was hardly the first that we had had to have an advanced warning that severe action needed to occur. I am not even sure that Ms. Bassett hadn't been urging the Federal regulators to move earlier on Madison and made us aware of that.

Mr. BEN-VENISTE. Could you describe your understanding of the relationship between Jim McDougal, Mrs. McDougal, and the Governor from the point that you began your service?

Ms. WRIGHT. They were friends. They were not social friends. They were not close personal friends—at least during the time I was there. Mr. McDougal had been on Governor Clinton's staff in his first administration—

Mr. BEN-VENISTE. What years were those?

Ms. WRIGHT. In 1979 and 1980. And I believe that all former staff are considered friends of the Governor's.

Senator DODD. It might just be helpful to step back, if Counsel doesn't mind. Where did he actually meet Mr. McDougal?

Ms. WRIGHT. Actually, I think maybe they both had internships in Senator Fulbright's office.

Senator DODD. Mr. McDougal worked with Senator Fulbright?

Ms. WRIGHT. I believe that is correct.

Mr. BEN-VENISTE. It was when President Clinton was a student working in that office that they probably met?

Ms. WRIGHT. Yes.

Mr. BEN-VENISTE. Time passed and Mr. McDougal became a staff assistant to Governor Clinton during his first term?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Again, when did you begin working for Governor Clinton?

Ms. WRIGHT. I went to Arkansas right after his 1982 re-election defeat.

Mr. BEN-VENISTE. From 1982 on, would you again describe your observation of the relationship between Governor Clinton and Mr. McDougal?

Ms. WRIGHT. Well, I think shortly after I got there, McDougal received the Democratic nomination for the Third Congressional District. They were both on the Democratic Party circuit going to the Democratic Party rallies. They were both on the same ticket in that District of the State. I treated all former staff people as the Governor's friends. Beyond that, it wasn't a close relationship.

Mr. BEN-VENISTE. And did you observe that Mr. Clinton and Mr. McDougal would meet from time to time?

Ms. WRIGHT. I didn't, no.

Mr. BEN-VENISTE. Did you observe—

Ms. WRIGHT. On the campaign trail, when Mr. McDougal was the Congressional nominee, I know that they ran into each other all the time.

Mr. BEN-VENISTE. But in terms of socializing, the McDougals and the Clintons dining together in the evening, or other social events of a nonpolitical nature, if the Governor can have such events, I take it your observation was that the relationship was one that was based more on history, shared history, than on current involvement?

Ms. WRIGHT. I think that's correct; yes, sir.

Mr. BEN-VENISTE. Now let's talk for a moment about the appointment of Beverly Bassett, now Beverly Bassett Schaffer, as the Securities Commissioner for the State of Arkansas. Did you have some involvement in the selection process?

Ms. WRIGHT. I sure did. I am so proud of that appointment, and I wanted it so badly because I was enamored of the idea of having the first woman Securities Commissioner in the State.

Mr. BEN-VENISTE. Much has been made of a telephone slip message that has been introduced into evidence in these proceedings that indicated that Mr. McDougal favored the appointment of Ms. Bassett Schaffer. You were intimately involved in the appointment process. Can you explain what weight, if any, that telephone slip message may have had?

Ms. WRIGHT. It had no weight.

Mr. BEN-VENISTE. Why do you say that?

Ms. WRIGHT. When you are hiring cabinet and subcabinet and agency directors, it is a different process than recommendations for appointments to boards and commissions and voluntary activities. But I know that the possibility of appointing Beverly pulled together a number of areas that just made it so perfect. She was known as a very bright attorney. She came from a family that were long and deep supporters of the Clinton's in their area of the State, and she was a woman.

There never really was anybody else in the running. I was so excited about this prospect. I had ahold of this, and I wanted it bad. I don't even remember Jim McDougal calling and recommending. It really didn't matter. It was irrelevant.

Mr. BEN-VENISTE. And in terms of her performance in the job, can you tell this Committee what your view was?

Ms. WRIGHT. That she was superb.

Mr. BEN-VENISTE. Mr. Chairman, thank you for your largess in extending us additional time, but I think I will cede it back at this point, unless Senator Dodd has anything.

Senator DODD. No, Mr. Chairman. I will move things along.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I want to pick up the thread on the Perry County Bank. You were not involved, Ms. Wright, in the 1990 campaign as a treasurer or campaign manager. Is that correct?

Ms. WRIGHT. I was not involved at all in that campaign. During the fall, I was the State Party Chair and obviously had my responsibilities there to the ticket, and I did attend some of the strategy meetings of the campaign.

Mr. CHERTOFF. You didn't handle the money in 1990?

Ms. WRIGHT. I had nothing to do with the money.

Mr. CHERTOFF. You got a call within the last year, or the last 2 years, from Glenda Cooper who had been on the campaign staff?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. Where were you when you got the call?

Ms. WRIGHT. At my home.

Mr. CHERTOFF. You live in Washington now?

Ms. WRIGHT. I do live in Washington.

Mr. CHERTOFF. Were you surprised to hear from her?

Ms. WRIGHT. I was delighted to hear from her.

Mr. CHERTOFF. Do you have an ongoing social relationship with her or was she someone you hadn't spoken to in a number of years?

Ms. WRIGHT. No. One of the fun things about my having moved back to Washington is that a lot of Arkansans come here, and I get to see them. And so, I hear a lot from people that I didn't necessarily socialize with but who I liked, or knew. They come here, and I get to see them.

Mr. CHERTOFF. So she called more or less out of the blue, right?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. Was she in Arkansas? Is that where she was calling from?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. She told you she had been visited by the FBI?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. She told you that the FBI had asked about withdrawals of cash from the Perry County Bank?

Ms. WRIGHT. She told me that they were asking her about a time when she had gone to that bank to pick up some cash, and she had signed a receipt for that cash. I don't think they were asking her about withdrawals. All I know is that she signed a receipt for the money bag.

Mr. CHERTOFF. And she picked up money?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. Cash?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. She told you that she was calling you about it because Mr. Lindsey had left word that if anybody ever said anything to her about that incident, she was to let him know. Correct?

Ms. WRIGHT. Not in that tone of voice. Not in that spirit. I got the impression that she was uncomfortable with that amount of cash, that it was an uncomfortable experience, and he had told her that "If you ever get in any trouble about this, if it ever raises up, I'll handle it for you." So she wanted me to tell him.

Mr. CHERTOFF. Did she tell you why she was uncomfortable handling that amount of cash?

Ms. WRIGHT. No, and I didn't ask. But wouldn't you be uncomfortable if you were carrying around \$30,000 in cash?

Mr. CHERTOFF. It depends why I was doing it.

Ms. WRIGHT. Oh. Well, I would be under any circumstances.

Mr. CHERTOFF. Ms. Wright, she calls you up and she says, about 4 or 5 years after the event, because of the fact that the FBI has come to her, she now wants to report this to Mr. Lindsey. Right?

Ms. WRIGHT. She asked me to let him know, yes.

Mr. CHERTOFF. Did you ask her why she didn't call Mr. Lindsey herself?

Ms. WRIGHT. I didn't, because I had this issue with a lot of Arkansans who assumed I could just talk to them all of the time, anytime, and it would be much easier to let me pass the message on.

Mr. CHERTOFF. Did you pass it——

Ms. WRIGHT. A lot of Arkansans really trusted me to take care of things for them.

Mr. CHERTOFF. Did you pass it on?

Ms. WRIGHT. I did.

Mr. CHERTOFF. By the way, did she tell you she had picked up \$30,000 in cash?

Ms. WRIGHT. I don't think she did mention the amount.

Mr. CHERTOFF. Well, you said it was a large sum. How did you know it was a large sum?

Ms. WRIGHT. She told me it was a lot of cash.

Mr. CHERTOFF. She didn't tell you how much, though?

Ms. WRIGHT. I don't think she did, no.

Mr. CHERTOFF. Did you have any reaction when she told you she had picked up a lot of cash?

Ms. WRIGHT. No, Mr. Chertoff. I knew what she was talking about.

Mr. CHERTOFF. What was she talking about?

Ms. WRIGHT. I knew, at that point, that there had been three checks cashed at the Perry County Bank, and I assumed that was what she was talking about. I didn't ask her questions. I wasn't involved in that.

Mr. CHERTOFF. How did you know there had been three checks cashed at the Perry County Bank at the point when she called you?

Ms. WRIGHT. Either from press reports, or questions I had been asked; I don't know. I don't remember exactly when I first knew about it.

Mr. CHERTOFF. Oh, so this issue had come up previously in terms of questions you had been asked by the press?

Ms. WRIGHT. In the course of these investigations, yes.

Mr. CHERTOFF. You got this call from this witness, Ms. Cooper, after you were aware there was an investigation going on?

Ms. WRIGHT. I don't know about the investigation. It was after I was aware that three checks had been cashed on the same day.

Mr. CHERTOFF. The question is how did you become aware of that? How did you know that when you got those calls?

Ms. WRIGHT. In the course of these investigations that are going on.

Mr. CHERTOFF. How did you know this was being investigated at the time you got this telephone call?

Ms. WRIGHT. May I ask my attorney for some guidance, please?

Mr. CHERTOFF. Sure.

[Ms. Wright and Mr. Cohen consult.]

Ms. WRIGHT. Under a document subpoena I produced the documents that had the checks.

Mr. CHERTOFF. You got this call from her after you had already received the Grand Jury subpoena for the documents relating to these checks?

Ms. WRIGHT. No, I just got a Grand Jury subpoena for——

Mr. COHEN. I think she was custodian of records, Mr. Chertoff, of the documents for the campaigns until 1990, and it was in that

connection, just so the record is clear and the Committee knows, those documents produced included the ones you just asked about.

Mr. CHERTOFF. But, Ms. Wright, you were custodian of the records of the 1990 Gubernatorial Campaign even though you were not involved in that campaign?

Ms. WRIGHT. That's correct. Initially I was, and I subsequently relinquished that role.

Mr. CHERTOFF. You know Bob Nash, right?

Ms. WRIGHT. I certainly do.

Mr. CHERTOFF. Where does he works now?

Ms. WRIGHT. He is in the White House Personnel Office. He heads it.

Mr. CHERTOFF. Did he give you a call about this incident of withdrawals of cash?

Ms. WRIGHT. I don't recall that he called me. I do believe that that is a correction I need to make in my deposition. In both thinking about it, and then asking him about it later, I remember he told me that he went to the Perry County Bank, and I just may have assumed it involved cash. I have no idea, actually.

Mr. CHERTOFF. Let me read you—

Ms. WRIGHT. I know. I am telling you that I was in error in my deposition.

Mr. CHERTOFF. Let's put it out there and you can tell us what is in error and what is not in error. It is on page 320 of your deposition of the first day, after you testified about your call from the campaign worker, Ms. Cooper. And I gather, by the way, you did report to Mr. Lindsey about this call you got concerning the cash withdrawal, right? From Ms. Cooper?

Ms. WRIGHT. I did, yes.

Mr. CHERTOFF. And then you said here at page 321:

Answer: Well, then there was a third conversation. I was having a conversation at some point, and I don't remember where or why or how or what the subject was, but the issue of the 1990 campaign came up. I was talking to Bob Nash, and he told me that once Bruce had asked him to go to Perry County and pick up some get-out-the-vote cash for him. That's all I know about that.

Question: Did you report what Mr. Nash said to Mr. Lindsey?

Answer: No.

What part of that sworn testimony do you want to correct?

The CHAIRMAN. Why don't we give a copy of this deposition to the witness, and could I have a copy, please?

Mr. CHERTOFF. Page 320, A-1.

The CHAIRMAN. For the witness. And could I have a copy, please? [Documents distributed.]

Ms. WRIGHT. The sentence that begins "I was talking" should probably be corrected to read, "I was talking to Bob Nash and he told me that once Bruce had asked him to go to Perry County Bank for him."

Mr. CHERTOFF. For him. So the part where you told us in your sworn deposition, "and pick up some get-out-the-vote cash," that is inoperative now?

Ms. WRIGHT. Yes, sir, it is.

In the deposition, I actually had forgotten all about all of these conversations and never shared them with my attorney or anything, and the skill of Mr. Giuffra's thorough tedium reminded me in the way he asked one question, and I conferred with my lawyer,

told him about these, and the major thing that I then felt was responsive to Mr. Giuffra's question was the Glenda Cooper. But in my head I knew I had heard something from Bob Nash about going to the bank. It wasn't anything I had thought through. I now can't remember the exact words. All I can remember for certain was that he went to the bank, and I think I was in error in adding the cash to that statement.

Mr. CHERTOFF. Has your changing recollection been affected by any knowledge you have that in between your deposition testimony in January and your testimony today that Mr. Nash had been asked questions and had denied ever going to the Perry County Bank for cash?

Ms. WRIGHT. I don't know about that. I did ask Mr. Nash about whether my memory was correct.

Mr. CHERTOFF. When did you do that?

Ms. WRIGHT. After the deposition.

Mr. CHERTOFF. You called Mr. Nash up?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. How soon after the deposition?

Ms. WRIGHT. I don't remember.

Mr. CHERTOFF. What did you ask him? You asked him, Bob, is my recollection right? Did you go to get cash at the Perry County Bank?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. And he said, no?

Ms. WRIGHT. He said "not cash." I went to the bank.

Mr. CHERTOFF. Now did you call him before your second day of deposition?

Ms. WRIGHT. I don't recall. I don't know.

Mr. CHERTOFF. Because you didn't correct it in your second day of deposition. Is there some reason you didn't correct it when you came back for your second day?

Ms. WRIGHT. No, sir. But I, of course, didn't have a copy of my first day of deposition and I hadn't reviewed it. There are a lot of errors in it, not that I have gotten it and reviewed it.

Mr. CHERTOFF. Your second deposition was a month later.

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. You didn't have an opportunity to review your deposition in that month?

Mr. COHEN. Mr. Chertoff, for the record, under your rules we did not get a copy of this until 4 days ago.

Mr. CHERTOFF. I think you were entitled to come in and review.

Mr. COHEN. We were not sent a letter that we were entitled to review it under the rules in a letter sent out by Mr. Giuffra. We were not given access to it until 4 days before our appearance here.

Mr. CHERTOFF. But here's my question to you, Ms. Wright. You have just told us that after the deposition in January you called Mr. Nash to check this recollection. Obviously, this particular piece of testimony stuck in your mind. My question to you is, why didn't you correct this in your second day of testimony?

Ms. WRIGHT. I wish I had, I don't know why I didn't. I've never been through a process like this. I know it is a very comfortable process for you, but I don't know what going to a deposition like this is. I don't know what Mr. Giuffra will let me do and not do.

I just know that I was caught in an endless series of questions. I don't even remember what I was asked about most of the time. I do know from reading this that I was misunderstood on some occasions. I mean, at one point I referred to "Burl Anthony" and it's in this deposition as "Bill."

Mr. CHERTOFF. But you remembered enough of that deposition to call Mr. Nash and get his version of the story, so you could refresh your memory?

Ms. WRIGHT. I doubt that I called him just on that issue.

Mr. CHERTOFF. What else did you call him about?

Ms. WRIGHT. I frequently call him on behalf of people who want to know the status of an appointment request in the White House.

The CHAIRMAN. Let me say that we'll come back. We want to move the hearing and I recognize our colleagues even yielded back time. Senator Sarbanes, do you have questions to raise?

OPENING COMMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me follow up on the question that has been put to you, which was why you didn't—

The CHAIRMAN. I am going to ask that as long as we are down to three Members, that we go to 15 minutes so we can keep a more orderly flow and possibly even conclude this sooner, if my colleague has no objection?

Mr. BEN-VENISTE. I'm sure we won't need that much, but thank you, Mr. Chairman.

The CHAIRMAN. OK.

Mr. BEN-VENISTE. Ms. Wright, the question was put to you, why didn't you correct the prior testimony regarding Mr. Nash when you had the opportunity to review your transcript. Now, Mr. Chertoff apparently was under the impression that the transcript was, in fact, made available to you for your review sometime in the interim between your first day of testimony and when you were recalled by Mr. Giuffra to give a second day of testimony. Was that the case? Were you so advised?

Ms. WRIGHT. No, sir.

Mr. BEN-VENISTE. Mr. Cohen, were you so advised?

Mr. COHEN. No, Mr. Ben-Veniste.

Mr. BEN-VENISTE. So no one advised you that you would have the opportunity to review the transcript. Let me ask you a second question.

Ms. WRIGHT. Is it inappropriate for me to correct it today? That's what I'm attempting to do.

Mr. BEN-VENISTE. No, of course not. It is quite appropriate for you to do so.

Ms. WRIGHT. Thank you.

Mr. BEN-VENISTE. But the inference was that you had some obligation because you were advised you were entitled to review the transcript. In fact, no such offer was made to you and you were not allowed to review the transcript between the 2 days of depositions, even though they occurred in the space of a month apart. I think you ought to be entitled to develop that response to a question which implies facts which are not quite accurate. In your second

day of testimony, were you asked about the same subject matter, to the best of your recollection?

Ms. WRIGHT. I don't believe so.

Mr. BEN-VENISTE. Therefore, there was not an opportunity, in the second day of testimony, to go back to the same subject matter unless you had initiated it. I take it your day was largely consumed with trying to get finished with the process during your second appearance before this Committee in deposition.

Ms. WRIGHT. I have been trying to get finished with the process since the beginning of the first deposition.

Mr. BEN-VENISTE. Having gone through all of that, and having corrected your version of your conversation with Mr. Nash, do you have anything further to add? If not, we'll go to another subject.

Ms. WRIGHT. No, sir. I mean, the only thing—not to that specifically, but Mr. Chertoff made reference to the words that I used in the deposition responding to my impression as that the money was excessive and curious. And the only comment that I would like to make on that is I knew nothing about that campaign. I have no idea what they were doing with that money. For me to even say it was excessive and curious is playing a regrettable Monday morning quarterback role, which is inappropriate, and I have no idea whether it was excessive. It did strike me as curious to do three checks on the same day. That's all.

Mr. BEN-VENISTE. In any event, this matter has been investigated by the Independent Counsel, as Mr. Chertoff brought out. And your records were produced to the Independent Counsel or the FBI or both. The matter has been the subject of questioning, by you, by individuals or authorities other than this Committee. You have testified to the full extent of your knowledge regarding the 1990 campaign which you have indicated you were not directly associated with?

Ms. WRIGHT. Correct.

Mr. BEN-VENISTE. Let me ask you this. Allegations have been made regarding the relationship between Governor Clinton and David Hale. Mr. Hale has characterized his relationship with the Governor in a certain way in testimony which was given publicly, for the first time, recently in the trial in Arkansas. I would like to get your understanding of who Mr. Hale was in early 1983 and beyond in Arkansas and what his relationship was to the best of your ability to observe and provide this Committee with information in connection with Governor Clinton.

Ms. WRIGHT. Mr. Hale was a municipal judge who had been appointed initially by Governor White.

Mr. BEN-VENISTE. I'm sorry to interrupt you, but for those who are not familiar with the politics of Arkansas, was Governor White a Democrat or a Republican?

Ms. WRIGHT. He was a Republican when he ran for Governor. But he had been a Democrat before that. Mr. Hale was not someone we knew well. He did not have a good reputation. He was sort of sleazy and we basically didn't have anything to do with him except where we had to run into him, and we were friendly.

Mr. BEN-VENISTE. He has indicated in statements he has made—and I'm paraphrasing—that he was a friend of Governor Clinton.

Do you have any information that would substantiate a claim of friendship between Mr. Hale and Mr. Clinton?

Ms. WRIGHT. As I tried to say in my opening remarks, political figures get to make an awful lot of friends, and they did know each other. Governor Clinton was very friendly to him, as he is to even people I don't think deserve his being friendly to. And he had some relatives who were friends. I also think Mr. Hale is someone who has always played loose with facts and exaggerated.

Mr. BEN-VENISTE. We have had testimony in that regard from officials of the Small Business Administration, who noted that Mr. Hale had exaggerated and embellished and lied to them and was a "frequent name-dropper." But in terms of your personal observation, was that true in this regard?

Ms. WRIGHT. I just didn't want anything to do with Mr. Hale. I didn't have—unless he called about some matter that he thought he needed—that needed the Governor's office's attention about his court. We didn't have much to do with him. He had a brother who was a good supporter and loyal friend, and he also was Judge Hale. He helped put together several fundraisers for us, the brother did, and I think David came to those.

Mr. BEN-VENISTE. What does a municipal judge deal with? Was this a high-level judicial authority?

Ms. WRIGHT. I think they deal with traffic violations and driving under the influence violations, things within the city's jurisdiction for enforcement.

Mr. BEN-VENISTE. Did there come a time when you learned Mr. Hale was making allegations concerning now President Clinton?

Ms. WRIGHT. I did. I began hearing that he was making wild accusations about some kind of pressure about loans and money.

Mr. BEN-VENISTE. Did you have any contact with the President or Mrs. Clinton regarding those allegations?

Ms. WRIGHT. Yes. Early on, President and Mrs. Clinton called me on the phone one day, I believe it was on a weekend, and we had a conversation trying to imagine what on earth David Hale was talking about. We were trying to figure out if maybe he was alluding to some project of the State that he had made a grant to or a loan to and we couldn't remember anything like that. We were all very perplexed trying to figure out what it might be related to. None of us could remember. I mean, he was clearly somebody we didn't deal with or have a lot to do with, and I'm not even certain that the information we had at that point, which was primarily through the press, we understood that it was allegedly a pressure for something dealing with the personal holdings of the President. We were just absolutely perplexed trying to figure out what he was talking about, and we couldn't any of us remember ever being involved with him in any kind of a loan situation.

Mr. BEN-VENISTE. This was at a time when Mr. Hale was under investigation and about to be indicted in Little Rock and was trying to plea bargain to get a lesser sentence. As his lawyer, Mr. Coleman testified before this Committee, he was trying to make a deal to get immunity for Mr. Hale and allow him to stay on as a judge, while refusing to provide information to Federal law enforcement authorities about information he might know. He approached the media to try to sell his story and to enhance his position vis-

à-vis his bargaining. And all that comes from Mr. Coleman. So it was at this point that you had the conversation you have just described to us?

Ms. WRIGHT. To my understanding, yes.

Mr. BEN-VENISTE. Mr. Chairman, we will cede back whatever remaining time we have.

Senator DODD. How much time do we have left here?

The CHAIRMAN. Two minutes.

Senator DODD. I think it should be 2 minutes. I just wanted to come back, Ms. Wright, because we get involved in these hearings and obviously there is a lengthy line of questioning on a certain point that, if one were not necessarily familiar with everything, one might draw some conclusions. It also reflects the amount of time and attention paid to a particular issue. I am speaking specifically about the Whitewater issue and the President's preoccupation, or lack thereof, with this issue. Given your description of the relationship between Mr. McDougal and Governor Clinton, I would like to ask you about how important the Whitewater investment appeared to the Governor during the 1980's. The questioning that went on could lead one to believe that this investment was discussed almost on a daily basis.

Ms. WRIGHT. Oh.

Senator DODD. You laugh, but people aren't familiar with this and they go through 2, 3, or 4 hours of questioning about a particular note or letter, and I'm not minimizing the importance of it, but when you spend 2 or 3 hours on this, one could be left with the impression that this was a constant subject of preoccupation or questioning or discussion. I want to ask you, was that so? Was that the case?

Ms. WRIGHT. Not so at all. The only preoccupation with Whitewater occurred once a year when we filled out the disclosure forms to file as to whether it was among the things that was listed on the form—

Senator DODD. Well, did—I'm sorry.

Ms. WRIGHT. —and neither were we preoccupied with Mr. McDougal. Generally, anything to do with Mr. McDougal occurred when he contacted the office for it.

Senator DODD. For instance, was there any discussion between you and the Governor about how important Whitewater was to the future Governor's security? Was this a necessary investment for him to sort of build up a financial portfolio of some kind?

Ms. WRIGHT. I have the impression, probably not—from general conversations, not those specific words, that at one point they had had an errant fantasy that it might have something to do with the financial future, but that notion had long disappeared by the time even I arrived in Arkansas.

Senator DODD. Was there any notion of expressions of deep appreciation to Jim McDougal for having brought this investment to him, speaking of the Governor?

Ms. WRIGHT. Oh, no, sir. There was from time to time, concern arose over the years about whether he was handling things properly, and then as time went on, whether he was keeping them properly informed.

Senator DODD. So, in your opinion, Whitewater was not something that was of such paramount importance to the Governor that he would feel obliged to extend special favors or attention to Mr. McDougal?

Ms. WRIGHT. Whitewater was like a pesky gnat that you kept batting away and it never would completely go away. What are these lights?

Senator DODD. That's letting me know that I have terminated my questioning. It's not for you, it's for me.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Actually, Ms. Wright, it was kind of like a \$200,000 albatross, because you understood, as you have testified, that this investment always lost money; right?

Ms. WRIGHT. I think I testified that my impression was that the Clintons thought it was a loser.

Mr. CHERTOFF. And of course, your common sense tells you, that when someone takes out a big loan on an investment and the investment doesn't produce any revenue, someone has to keep that loan current. In fact, as we discussed in your opening testimony, you became aware that there were some issues that arose sometime about keeping loans related to Whitewater current or being current on tax payments; right?

Ms. WRIGHT. Yeah, a couple of times that came up.

Mr. CHERTOFF. Can you understand that it was therefore of some interest to the Clintons to make sure that this entire project didn't crash and they then come on the hook for a \$200,000 loan? I mean, that would be a pretty serious financial setback for a couple that didn't have a lot of money on hand. Would you agree with that?

Ms. WRIGHT. I never gave it that kind of thought.

Mr. CHERTOFF. Since you were asked questions about it, let's work through it. You can understand that if during the period from 1982 to 1986, roughly the paying of the loan, keeping it current so it doesn't go into default, was basically McDougal pulling money out of his other ventures. If he did go into default, and if the loan was called and it was forced to be paid off, and if McDougal didn't have enough money, the Clintons would ultimately have a lot of substantial financial liability and a big embarrassment. That makes sense; right?

Mr. COHEN. Mr. Chertoff, do you want her to assert all those facts? I understand the Committee has taken a lot of testimony on the subject.

The CHAIRMAN. Counselor, you're really going afield. I think he's setting a framework by which he will raise a question. She can ask for it to be repeated and we can narrow the question. I'll ask him to narrow it. Why don't you sit next to Ms. Wright so if you have any suggestions you want to give to her or if she wants to turn to you, she can. I want you to be able to give your client good representation. Why don't you come on up to the podium?

Mr. COHEN. Mr. Chairman, I'm fine from here.

The CHAIRMAN. We are not going to have you interposing your objections from the first row. You have every right to do that and to protect your client, but I want you to do it at the table if you're going to do it.

Mr. COHEN. I understand, Mr. Chairman.

The CHAIRMAN. All right, I really want to accord you that. I think you should take the benefit of that. Please, why don't you do that? It will be more orderly.

Senator SARBANES. Ms. Wright can turn to counsel in the first row if she needs to, can't she?

The CHAIRMAN. Senator, when you weren't here, this has happened several times. I think it would make more sense unless, counsel, you have some specific reason why you don't want to do it, why don't—

Mr. COHEN. We are fine from here, Mr. Chairman.

The CHAIRMAN. OK, but I am going to ask you not to interpose your objections from the first row. I am according you that opportunity. Please attempt to narrow your question so that we don't lose the witness along the way, Mr. Chertoff. I think that's reasonable.

Senator DODD. Mr. Chairman, can I just suggest, I understand your point, but I think we want to be careful. The witnesses here, they're not lawyers necessarily. If there's a line of questioning, just so we don't set a precedent, I wouldn't want to have every witness have lawyers sitting at the table.

The CHAIRMAN. No, but I just wanted to let counsel know, and Ms. Wright know, that she has a right to have counsel at her side. Nothing should be imputed or implied by that, but it would provide for a more orderly way of giving advice to your client. Also, if you want to stop her and interpose a thought or an objection to a line or the manner in which a question is put forth, it would be a more orderly way to do it. That's all I am suggesting.

Mr. COHEN. I'll be at the table, Mr. Chairman.

The CHAIRMAN. Thank you, Ms. Wright.

Senator DODD. The question was preceded by a—

The CHAIRMAN. But Senator Dodd, I understood that and I asked Counsel to refrain from a long big dialogue on it and to narrow the question, so why don't we take it from there.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Wright, would you agree with me—

Senator DODD. Why don't you get a microphone for the lawyer so he can pipe right up?

Mr. COHEN. I have good lungs, Senator, thank you.

Mr. CHERTOFF. Would you agree with me, Ms. Wright, there would be a great interest on the part of the Clintons of having this note not go into default where they would be responsible for part or all of that; right?

Ms. WRIGHT. Any investor, I believe, would have that concern. I do believe that is still tied to your series of phrases and sentences earlier.

The CHAIRMAN. Let's strike Mr. Chertoff's previous statement which led up to a question. Let's strike this one just raised. Let's not try to spell out a whole series. Now the question is a pretty simple one. I want you to frame it in that manner as it relates to whether the failure of Mr. McDougal, or this investment, to be able to keep payments up would have been a concern to the Clintons in this particular case. I think you know that's really the question, but Mr. Chertoff, please put the question to Ms. Wright.

Mr. CHERTOFF. Would you agree with me, Ms. Wright, that it was in the Clintons' interest to make sure all those Whitewater loans were being kept current and paid so that they didn't default? Would you agree with that?

Ms. WRIGHT. It was in the Clintons' best interest that they be kept current and not in default.

Mr. CHERTOFF. Because if they defaulted, the Clintons might personally be liable for a lot of money; right?

Ms. WRIGHT. Yes, but Mr. Chertoff, I was not—I didn't regard Whitewater with this kind of depth even.

Mr. CHERTOFF. But it's a very simple—

The CHAIRMAN. Ms. Wright, let me tell you, one of the problems here, is that you are anticipating what he's going to say. It's not a trick question.

Ms. WRIGHT. No, I am not, sir. I believe he is asking me what I think the Clintons were feeling.

The CHAIRMAN. No, he is not. He is going to ask you a specific question. If you have no opinion, you can say you have no opinion. If you have no knowledge, you can say you have no knowledge. Let's try to be responsive to the question, though. Go ahead.

Mr. CHERTOFF. Would you agree with me that if the loan did go into default, that would have a serious negative effect on the Clintons because they would be liable to pay the loan off?

Ms. WRIGHT. I don't know enough about Whitewater to be able to agree or disagree with you on that. I know that I would be in serious trouble if I didn't get a loan paid off from me.

Mr. CHERTOFF. Therefore, you would agree the Clintons had an interest in making sure that Mr. McDougal was able to keep the loans current; right?

Ms. WRIGHT. Well, it was important to the Clintons that the McDougals run the business in a responsible and current fashion.

Mr. CHERTOFF. Because if Mr. McDougal himself, if his financial house fell down and he wasn't able to keep the investment up, then the burden would fall on the Clintons. That's just simple common sense; right?

Ms. WRIGHT. I don't know. I don't know that until recently we linked Whitewater, in any way, to the other McDougal investments.

Mr. CHERTOFF. As far as you know? You didn't link them in your own mind is what you're telling me?

Ms. WRIGHT. I can only talk about what I thought.

Mr. CHERTOFF. The 1985 fundraiser was spurred by another loan that Mr. Clinton had taken out, this time to fund his 1984 campaign; right? There was a deficit from the 1984 campaign; right?

Ms. WRIGHT. It was spurred by our need for political money.

Mr. CHERTOFF. There was a deficit from the 1984 campaign because Mr. Clinton had taken out a personal loan?

Ms. WRIGHT. We still had some left to pay off, yes.

Mr. CHERTOFF. He had to pay it off. It was a personal loan that he took out?

Ms. WRIGHT. Yes, sir, but that is a formality. The loan was to the campaign, not to Mr. Clinton. Under Arkansas law, a bank could not make a loan to a campaign committee but only to the candidate. There was no question we were going to pay that loan.

Mr. CHERTOFF. You don't have to be defensive. I just want to be clear. The loan was in Mr. Clinton's name, the 1984 loan?

Ms. WRIGHT. Yes, sir. Yes, sir, it was.

Mr. CHERTOFF. Some of the 1985 money for the fundraiser was used to pay back that loan; right?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. I assume you filed that in campaign disclosure reports?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. When were those filed, in 1985?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Do you remember how much of the money that was taken in at the fundraiser was used to pay off that 1984 debt?

Ms. WRIGHT. I don't.

Mr. CHERTOFF. When we were talking about the 1990 fundraiser, I think you made the observation a few moments ago that what you found—I'll use the words you used in your deposition—"excessive in amount and curious in manner" about the 1990 cash withdrawals was the notion that you have separate checks written on the same day at the same time. Can I conclude from that, as someone who has experience in campaigns, when you see that kind of sequence of checks, it sets off like a little red flag in your mind. You have to look at something a little more closely; right?

Ms. WRIGHT. I found it curious. I don't know enough about the campaign to know whether it's red flags. And my even—my usage of words like that reveals that I still do Monday—what do you call it—Monday morning quarterbacking, about Mr. Clinton's campaigns when I had nothing to do with them.

Mr. CHERTOFF. Well, let's talk about the one you did have to do with, the 1985 fundraiser. I would like to put before you three cashier's checks, all three of them dated April 4, 1985, which were turned in at the fundraiser. I'll give them to you in a second. The fundraiser was actually held at the Madison Guaranty Bank building; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. It was in the lobby?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. About 20 people attended?

Ms. WRIGHT. I do not remember for sure, but it was not many people.

Mr. CHERTOFF. You collected the checks?

Ms. WRIGHT. I did.

Mr. CHERTOFF. You deposited them in the appropriate accounts; is that right?

Ms. WRIGHT. I did.

Mr. CHERTOFF. Interestingly, we have here \$9,000 worth of checks. Am I right that some of the checks came in later, but on that day you took in around \$20,000, give or take?

Ms. WRIGHT. I believe it was \$22,000 that day and then the total, I think we got two subsequent mailings of checks. I think the total was around \$30,000.

Mr. CHERTOFF. Now on the day where you take in about \$20,000, almost half of that comes in these three checks. If you look at these checks, you see that one is——

The CHAIRMAN. Would you identify the checks you're speaking of, Mr. Chertoff?

Mr. CHERTOFF. I will do it as we speak. There is a check from J.W. Fulbright for \$3,000 to the Bill Clinton Campaign Fund, one from Ken Peacock for \$3,000 to Bill Clinton, and there is one from Dean Landrum for \$3,000 to Bill Clinton. They are all dated April 4th. If you look at the checks, they are all cashier's checks; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Was that common to get cashier's checks in the campaign?

Ms. WRIGHT. It was not uncommon.

Mr. CHERTOFF. Not uncommon. That means they were checks someone purchased from the bank, not regular checks you use in the course of your ordinary checking; right? That's what cashier's checks are?

Ms. WRIGHT. If you say so.

Mr. CHERTOFF. You don't know what cashier's checks are?

Ms. WRIGHT. [Nonverbal response.]

Mr. CHERTOFF. Since we talked about sequential checks written to you the same day in 1990, did it seem odd to you these checks were sequentially numbered 2496, 2497, 2498, as if they were issued right at the same time, one after the other, on the same day, at the bank?

Ms. WRIGHT. No, sir, it didn't.

Mr. CHERTOFF. You didn't see anything odd about that?

Ms. WRIGHT. I didn't know then, and I don't know now anything about what any of these people's banking relationships was, and Mr. McDougal had a deadline of producing money for a fundraiser that day, and whatever the arrangements were, they did. No, it didn't occur to me as odd.

Mr. CHERTOFF. Mr. McDougal had a deadline for that day?

Ms. WRIGHT. He set the date and that was the day—was this the day of the fundraiser?

Mr. CHERTOFF. Yes, but you say you had a deadline of producing the money that day. Is that true?

Ms. WRIGHT. Yes, but that is absolutely no comparability to what I meant was curious about the other three checks, Mr. Chertoff.

Mr. CHERTOFF. But let me come back to your—

Ms. WRIGHT. The other three checks were for cash.

Mr. CHERTOFF. Let me ask you this question. You're saying to us that Mr. McDougal had an obligation, or had a deadline, to produce the money on that day. Why was it Mr. McDougal's obligation to produce the money on that day?

Ms. WRIGHT. I don't mean an obligation. He had set that day as the fundraiser and I think most people who agree to put together a fundraiser want to produce money at the fundraiser, so I mean it was his self-imposed deadline, not anything we put on him. I don't think we had any notion of how much money he was or wasn't going to raised before we went.

Mr. CHERTOFF. In fact, you told us some of the money came in after the deadline; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. These three checks, when you look at them, and you have already acknowledged this is about half the money you

picked up on that day, did you wonder—I mean, you knew who J.W. Fulbright was; right?

Ms. WRIGHT. Certainly.

Mr. CHERTOFF. Was he at the fundraiser?

Ms. WRIGHT. He was not. It was a great disappointment, because the date had been selected and suggested by Mr. McDougal because it was a date when Senator Fulbright could come.

Mr. CHERTOFF. Did you think that, when you looked at these sequential checks issued one right after the other on the same day at the bank, Mr. Fulbright, Mr. Peacock, and Mr. Landrum had all walked in together and stood in line to purchase cashier's checks for the maximum allowable limit for contributions?

Ms. WRIGHT. I didn't concern myself about their banking practices at all, Mr. Chertoff.

Mr. CHERTOFF. But you concerned yourself about complying with the campaign rules; right? That was your job, a principal job of yours as a Campaign Manager; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. And you were the person who took in the money; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Didn't this sequence of checks kind of leap out at you, and say this looks a lot like someone is deliberately structuring a large contribution, in three separate cashier's checks, in three separate names?

Ms. WRIGHT. No, sir, I didn't.

Mr. CHERTOFF. It didn't raise any question in your mind? You didn't have any desire to inquire or ask any questions about the remarkable coincidence of three contributors taking out the maximum allowable contribution under law, in three cashier's checks, issued by McDougal's bank, on the same day—literally one after the other after the other. None of that caused you to have any question in your mind?

Ms. WRIGHT. Were there three or four cashier's checks?

Mr. CHERTOFF. Well, I have three. If you know of a fourth, I would be interested in hearing about it.

Ms. WRIGHT. I mean, I just don't remember.

Mr. CHERTOFF. Let's work with these three.

Ms. WRIGHT. It wasn't uncommon. As you know, I don't really know what a cashier's check is, except that it is a valid trade of money that we put into the bank and the bank accepted it as a deposit. I don't know what cashier's—

Mr. CHERTOFF. It is awfully hard to believe that a woman who has managed three or four Gubernatorial campaigns—

Ms. WRIGHT. It was not uncommon that we got cashier's checks.

Mr. CHERTOFF. Let me finish. In a system where there are campaign limits as to how much you can give, where it's not appropriate to give money or reimburse other people's contributions, you were the chairman of the party, and you're going to tell us that you don't even know what a cashier's check is?

Ms. WRIGHT. I don't know why people use cashier's checks. I have never bought one, so I don't know. All I know is that it was not uncommon that we received contributions in cashier's checks.

A far greater concern to me, Mr. Chertoff, was—

Mr. CHERTOFF. If you don't mind, my concern first.

Ms. WRIGHT. Except that you put this concern in your question.

The CHAIRMAN. Please, let her finish. Go ahead.

Ms. WRIGHT. You made reference to the amounts, and that was the concern to me, and I know that I immediately checked to make certain that these people were giving legal amounts. That was my concern.

Mr. CHERTOFF. Because you knew if one of them or someone else wanted to give \$9,000 himself, you couldn't give \$9,000 in a single block. The only way you can legitimately book it in the campaign is to have it in separate checks; right? Separate amounts for each individual?

Ms. WRIGHT. Mr. Chertoff, I never looked at these three checks and thought that a person was giving \$9,000.

Mr. CHERTOFF. You acknowledged a moment ago, I think, that you do understand that cashier's checks have to be purchased, you go to the bank to purchase them?

Ms. WRIGHT. I don't know where you get cashier's checks. I think you get them at banks, and I don't know, I have never bought a cashier's check. I don't know why people use them.

Mr. CHERTOFF. Sometimes they use cashier's checks because their credit history isn't good and people want to make sure the check is good, but we'll come back to that.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, Mr. Chertoff has posed——

Senator DODD. Can I venture one point before you start? You may not be aware of this, Ms. Wright, but there was a line of questioning that was asked of you about Whitewater being predicated on the premise, and I think an inaccurate premise, that the Clintons knew that Mr. McDougal was keeping the Whitewater loan current. Therefore, the question about whether the Clintons were concerned about McDougal's financial condition. The law firm of Pillsbury Madison hired by the RTC, at a cost of around \$4 million to do their investigation, concluded, and I quote:

There is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater. The source of the funds used to make the advances or the source of the funds used to make payments on bank debt.

So the premise of Mr. Chertoff's question about whether or not the Clintons should have been nervous or you should have been nervous about Mr. McDougal's financial condition is false because there is no indication based on a \$4 million study by Pillsbury Madison that they were aware of that. I just want to make that point because it sort of lays out the assumption you should somehow know about it. In fact, the investigation said that there was no way they should have.

I'm sorry, Mr. Chairman. I apologize. Go ahead.

Mr. BEN-VENISTE. Ms. Wright, let me address another sort of presumption that was built into the questioning regarding these three cashier's checks. If this were a court of law, one would make an objection based on a fact not in evidence. What I'm referring to is the assumption that you studied these cashier's checks to determine that the checks were sequentially numbered. Did you make

such a study of the checks, other than their amounts and who the donors were?

Ms. WRIGHT. Not only did I not, in the course of these investigations that have gone on—which have considered the 1985 fundraiser, which are many, even beyond this Committee, I have produced documents about this fundraiser. And I have to say, Mr. Chertoff made me aware for the first time that they were sequentially numbered. I have never noticed it even in all the studying I have done of them in the course of investigations.

Mr. BEN-VENISTE. To the best of my knowledge—and I am sure Mr. Chertoff will correct me if I am in error—in all of his extensive questioning of you over 2 days, such a question did not occur to Mr. Giuffra. Nobody has questioned you before about this obvious and blatant sequential numbering of cashier's checks; isn't that so?

Ms. WRIGHT. When Mr. Chertoff mentioned that they were sequential was the first time, I never noticed that, ever. And believe me, I have touched these a lot in the last couple of years, and I have never noticed it, much less at the time.

Mr. BEN-VENISTE. Now, your issue in reviewing the contributions, as I understand your testimony, was to determine that no donor had exceeded the permissible amount. Is that correct?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. What process would you go through to do that?

Ms. WRIGHT. I went to the computer terminal, looked up the dates of the last contributions and if they didn't exceed, then they applied them to the 1984 campaign for the debt. If that would put them over, I applied the contribution to the 1986 campaign.

Mr. BEN-VENISTE. And that was done in connection with this fundraiser as well as others, I take it?

Ms. WRIGHT. Oh, yes, that was my routine.

Mr. BEN-VENISTE. Who was responsible for writing letters thanking the donors for their contributions at such events?

Ms. WRIGHT. It would have occurred under my supervision.

Mr. BEN-VENISTE. Well, we have here the list of all of the individuals who contributed either in person or otherwise through that fundraiser, and the letters that were sent out thanking those individuals. But I have to say that if we are going to get in this Committee into presumptions based on campaign contributions, that the candidate or his chief finance committee operative must know things about the contributions that are not apparent on their face, then I have to say, Senator, that we could be here for years investigating any number of differential allegations that could easily be made on the benefit of hindsight.

Following up on the point that you made in your initial comments to this Committee, Ms. Wright, that political figures are very vulnerable to the problems that people who make contributions to their campaigns get into subsequently, because there is an association. If we spend our time in this Committee on that time, not just from the mid-1980's but even more recently, we'll never get finished with our job. The June 17th date would be laughable.

Ms. WRIGHT. I cannot imagine that the Chairman who has been through a comparable experience would pursue that, and certainly I am very sympathetic right now with the problems that Senator

Dole is undergoing with the public scrutiny about sources of contributions that he took, and I don't believe that either Senator D'Amato or Senator Dole had an awareness of improper sources. And we had no awareness that there was anything suspicious about the sources.

Senator DODD. I want to point out too, and I don't know how much involvement Mr. Chertoff has had in campaigns. A lot of us have. I look down at the dates and 4/4 seems to be the prevalent date of the checks. Something was made of the fact that they are all dated that day, but that's fairly customary. I mean, people that come to events of mine, it's not uncommon for them to write the check at the event or write it before they come to the event, as a practical matter. Normally—again, now, there is a Gubernatorial requirement to meet, and I have not been a candidate for State office, but there's certain things that people look for, and obviously the amounts involved to make sure you don't exceed, and we have other requirements such as occupations and so forth. We have to require, and basic instructions to my staff is to check those sorts of things.

One of the things that the Federal Elections Commission has not asked us to do, and that is unless you're aware of it, is to sort of probe and call a person and ask the question about if the check is written in someone's name, and accordingly, the assumption is it's from that individual. You start calling everybody and saying is this really your check, it gets a little ridiculous, so none of us do that that I'm aware of.

So again, I don't know how aware Mr. Chertoff is or others are of these kind of processes that people who are seeking offices go through. It's not uncommon.

Senator Dole—and I wouldn't disagree with your conclusion on that. It would be a rare occurrence, an occasion, if someone was aware of that going on, but it's not unique. So the implication somehow that this should have been jumping off the page at you when you see J.W. Fulbright writing a check, you're not going to sit there and call Senator Fulbright and say, boy, I wonder where that one comes from. Unless I'm wrong, it's just the practicalities of this.

In fact, the other day in a response, in a column written by Joe Stevens, Senator Dole said, "In this business you don't know who is giving you money. We turned it over to the FEC."

For all of us sitting here, you hope this is done right, you have to watch for some of these things that may be glaring, but to suggest somehow that this should have jumped off the page at someone, I have to tell you, as a practical matter, you know, 20/20 hindsight is a wonderful luxury, and even there, no indication in the sense that you would have anything but to suspect you're looking at check numbers here, that you should have been calling Senator Fulbright or doubting somehow that he made a contribution is ridiculous on its face in my view.

Thank you, Senator.

Ms. WRIGHT. That's correct. I would point out, though, in addition, that one of the headaches about cashier's checks is that they don't bear an address, and we were required to have an address both for sending the thank you letter and for the official records.

And the addresses for two of these checks were among ones we didn't have and had to get sent to us afterwards. You have the response to that providing those addresses.

The CHAIRMAN. Mr. Chertoff.

Ms. WRIGHT. I never sat around fondling campaign checks to study them. I always deposited them just about as fast as I could.

Mr. CHERTOFF. Now this 1985 fundraiser, you had been asked some questions about David Hale. I mean, some of the figures who were involved in the transactions which Mr. Hale was part of in 1985 and 1986, moving money in and out of his Small Business Administration-funded company into various properties owned by Madison Guaranty Savings & Loan and out again. Let me ask you whether a number of the people who were part of that group that handled that money in 1985-1986 happened to come to this fundraiser, whether to your knowledge there were people who were at the fundraiser because they were very close associates of Jim McDougal. I guess Jim Guy Tucker was at this fundraiser; right?

Ms. WRIGHT. Yes, he was one of the few people there that I knew.

Mr. CHERTOFF. Actually, didn't he give the money in the name of his cable company?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. The Henleys were there?

Ms. WRIGHT. That was the first time I had seen him since we had defeated him in the 1982 primary and times had been very tense, so I was very aware that he was there in 1985.

Mr. CHERTOFF. David and James Henley were there; right?

Ms. WRIGHT. I think at least one of them was there.

Mr. CHERTOFF. They gave money?

Ms. WRIGHT. Yes, sir.

The CHAIRMAN. Who are the Henleys?

Mr. CHERTOFF. They are the brothers of Susan McDougal.

Ms. WRIGHT. Yes, and one was a State Senator at that time, I believe.

Mr. CHERTOFF. Do you know whether they engaged in some of the transactions which are the subject of the case in which Mr. Hale has testified?

Ms. WRIGHT. The Henleys?

Mr. CHERTOFF. Yes.

Ms. WRIGHT. I don't know.

Mr. CHERTOFF. Larry Kuca, do you know him?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Do you know whether he gave money?

Ms. WRIGHT. His is among the checks that we provided you, yes.

Mr. CHERTOFF. Is he the individual who pled guilty in connection with the investigation down in Little Rock?

Ms. WRIGHT. I don't know.

Mr. CHERTOFF. Ken Peacock, do you know Ken Peacock?

Ms. WRIGHT. I don't.

Mr. CHERTOFF. Steven Smith, do you know Steven Smith?

Ms. WRIGHT. I don't.

Mr. CHERTOFF. What about Chris Wade? Was Chris Wade—

Ms. WRIGHT. I have met Mr. Wade.

Mr. CHERTOFF. Did he give money?

Ms. WRIGHT. He was a regular contributor.

Mr. CHERTOFF. Do you know whether he was involved as the broker on the Whitewater matter?

Ms. WRIGHT. I know that now, and I am not certain that he was at that fundraiser.

Mr. CHERTOFF. But he gave money?

Ms. WRIGHT. I think we got the check subsequent to the fundraiser.

Mr. CHERTOFF. It was a check from Chris Wade?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Did you know, at the time, that he was the broker for Whitewater?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. R. D. Randolph, do you remember him giving money?

Ms. WRIGHT. Yes, sir, and I believe Mr. Randolph was present at the fundraiser.

Mr. CHERTOFF. He was a director of Madison Guaranty; right?

Ms. WRIGHT. I don't know.

Mr. CHERTOFF. What was his relationship with the Governor?

Ms. WRIGHT. I don't know how they knew each other. He was someone who had been around politics in the State. I don't remember, he may have also—I don't remember.

Mr. CHERTOFF. Did you know he was involved in one of these transactions that Mr. Hale has testified about involving a partnership between himself and Governor Tucker and Mr. McDougal?

Ms. WRIGHT. I know that now.

Mr. CHERTOFF. You did not know that at the time of the fundraiser?

Ms. WRIGHT. Not at all.

Mr. CHERTOFF. Didn't Mr. Randolph, in fact, kind of throw this fundraiser back in your face a couple of years later when he wanted the Governor to sign off on some legislation that affected one of Mr. McDougal's projects, the Castle Sewer & Water matter?

Ms. WRIGHT. I think you are referring again to one of the office memos that we had, and I think that's what he was doing. I don't know that for sure.

Mr. CHERTOFF. Let's get the memo to you. It is dated April 14th, and it's to "BC from NH," NH being Nancy Hernreich, and we will pull it out for you.

Ms. WRIGHT. I have it, sir.

Mr. CHERTOFF. It has that characteristic checkmark from the Governor indicating he had read the memo; right?

Ms. WRIGHT. Yes, it also has a comment from him on the memo.

Mr. CHERTOFF. It says:

Mr. Randolph dropped by to see you this morning to talk to you about the Water Bill you vetoed. He said that he talked to you on Sunday morning. He wants to know if the veto is going to stand. He would like you to call Jim Guy Tucker about this. He said that he has a difficult time getting an answer from you. He mentioned a meeting between you, Tucker and Jim McDougal a couple of years ago which involved \$33,000. This was pretty cryptic. He seemed angry. Someone, I think he prefers you, needs to call Tucker.

Now when you saw this, I take it you understood the reference to the meeting between the Governor, Tucker, and McDougal involving \$30,000 to be a reference back to this 1985 fundraiser?

Ms. WRIGHT. I didn't understand that. I suspected it because it also was not uncommon that people who had contributed money, when they got angry with an action of yours, decided that they would throw it in your face. And I, in fact, have engaged in that, when someone voted in a way that displeases me to whom I had written even a \$50 check. I'll say I wish I had never given you that \$50. I mean, it was not an uncommon thing for people to link their unhappiness with a regret of being associated with money, and I saw that—and my guess was that Mr. Randolph was doing this, although I also thought he was wildly exaggerating the amount.

Mr. CHERTOFF. Well, in fact, he was pretty close. How much did the fundraiser take in, about \$39,000?

Ms. WRIGHT. No, sir. I think it was \$30,200 or \$30,500.

Mr. CHERTOFF. So this \$33,000 isn't really—

Ms. WRIGHT. But I have to tell you, at that time I thought that fundraiser raised the amount of money I left there with. It has—only in the reconstruction of the investigations have I linked the checks that came subsequently as part of that fundraiser.

Mr. CHERTOFF. Did you actually have a conversation with Mr. Randolph about this, with R.D. Randolph?

Ms. WRIGHT. I don't remember whether I did or not.

Mr. CHERTOFF. Whether Randolph didn't say to Ms. Hernreich that he was sore about the thousand dollars or the \$3,000 he had given or the \$2,000 he had given, he talked about the \$33,000. How did Mr. Randolph know what the total take was on that?

Ms. WRIGHT. I have no idea, Mr. Chertoff. You'll just have to ask Mr. Randolph. I didn't give it another thought. I wouldn't have spoken to anybody about it. It is not uncommon that a former contributor will throw something about having raised money for you or giving money to you up in your face when they are unhappy with you. I took note of that as likely theory behind what Mr. Randolph meant. I felt very irritated about it. I had to set it aside in my mind and deal with the substance of the anger.

Mr. CHERTOFF. During the year before the fundraiser, almost exactly a year before the fundraiser, Mr. McDougal was fortunate enough to have a State agency, the Arkansas Housing Agency, lease space in his building. Do you remember that incident?

Ms. WRIGHT. Yes, sir, I do.

Mr. CHERTOFF. Were you actually involved in that decisionmaking process?

Ms. WRIGHT. Yes, sir, I was.

Mr. CHERTOFF. Were you at the meeting where Mr. Epes was present?

Ms. WRIGHT. I don't remember that. I didn't, until yesterday, recall that Mr. Epes had met with the Governor.

Mr. CHERTOFF. But now you remember it?

Ms. WRIGHT. No, I don't.

Mr. CHERTOFF. You don't know if you were there or not?

Ms. WRIGHT. I don't know.

Mr. CHERTOFF. You heard the testimony of Ms. Herr that she was told by Mr. Mallard at the time that this was something the Governor's office wanted done in 1984. They wanted to have this lease go to Mr. McDougal's building. Is that, in fact, what happened? Did the Governor's office want it done?

Ms. WRIGHT. No, sir, that is not, in fact, what happened. I didn't hear that testimony. Not much of yesterday was on C-SPAN. The State Building Services made the determination that ADFA was a good fit for that building. It happened, more often than I wish it had, that departments didn't like the locations that State Building Services liked. Usually this involved the downtown area. And I did, on two or three different occasions, including this one, meet with both the State Building Service officials and the resisting department people to try to ascertain what the problems were and see if they could be addressed.

Very often, it was just that they didn't want to be downtown. It wasn't ritzy enough. It was depressed areas. And the policy that we felt very strongly about was keeping a revitalized—helping to revitalize downtown Little Rock and the area adjacent to it. My job was to try to ascertain if there was a resistance merely based on the location as opposed to the adequacy. I believe I remember that, in this case, concerns were expressed about security. I think we did, in fact, add more lights to the parking lot, stuff like that, address those concerns.

Mr. CHERTOFF. So you actually remember participating in this in 1984?

Ms. WRIGHT. Oh, yes, sir, I did.

Mr. CHERTOFF. Then there was a subsequent meeting where it was taken to the Governor himself?

Ms. WRIGHT. I learned that yesterday. I don't recall it from the time.

Mr. CHERTOFF. Evidently Mr. Epes felt strongly enough, or someone in his agency felt strongly enough, that they took it up to the Governor himself; right?

Ms. WRIGHT. Evidently so, and not surprisingly.

Mr. CHERTOFF. Did you know that Mr. Epes continued to complain about the lease during the balance of that year to the State Building Services? Just yes or no. Did you know that?

Ms. WRIGHT. No, I don't remember that specifically. Mr. Epes is a very bright and very competent professional, but he also complains a lot.

Mr. CHERTOFF. In fact, there was an expansion of the lease, an additional lease was signed the following year in 1985; and that process was set in motion right around the time of the April fundraiser. Did you know about that?

Ms. WRIGHT. No, sir, I had forgotten about the expansion until he was reminded about it at yesterday's hearing.

Mr. CHERTOFF. Did you remember that additional new space was taken in another McDougal building across the street for the Revenue Department of ADFA also in 1985? Did you remember that?

Ms. WRIGHT. I do have a recollection of the Revenue Department moving in that area.

Mr. CHERTOFF. Now, Ms. Herr, the woman responsible for these leases, told us yesterday that at least during her tenure in this period of time, the only buildings in the downtown area, the Quapaw Quarter, into which State agencies were moving or opening new leases as they came up were Mr. McDougal's buildings. Do you have a memory contrary to that?

Ms. WRIGHT. No, but I am trying to understand what you are saying.

Mr. CHERTOFF. What I'm saying is, that whatever the general intention was of developing or helping to develop this particular quarter of Little Rock, the only landlord who benefited during this period, from new leases that were being obtained for agencies, was Mr. McDougal. No other landlord had a new State agency in his or her building in that quarter.

Ms. WRIGHT. I don't know that there were other areas being renovated and developed in that area. I don't recall any. One of the things that was admirable about Madison Guaranty is that it went into that area, it renovated an old building, made a very interesting structure and there was great hope that it was going to bring new life into the area.

But Mr. Chertoff, we did not make a determination that ADFA would be in that building. We never made a determination where an agency would be. We did not make a determination whether space that a landlord wanted rented out was adequate, but once SBS made the decision that it was appropriate space and there was a complaint and the complaint was about a downtown area, I had a responsibility to make certain that it wasn't a bias or prejudicial or bigoted concern.

Mr. CHERTOFF. You surely didn't think Mr. Epes was prejudiced or bigoted?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. In this case, though, I'm a little puzzled because actually the testimony we had yesterday was not that the Governor's office only got involved in the process at the end, but rather we had testimony from Ms. Herr, who has certainly no discernible reason to make up stories and who has apparently quite a clear memory about this. Her testimony was that from the very beginning, as soon as there was a request made by the agency not to take this space, she was told by Mr. Mallard—and you remember Mr. Mallard, right, Paul Mallard?

Ms. WRIGHT. Absolutely.

Mr. CHERTOFF. In fact, he was a friend of the Governor?

Ms. WRIGHT. And a cabinet member, yes.

Mr. CHERTOFF. She was told from the very get-go that the Governor didn't want to take any other proposals, the Governor's office wanted this in this particular building. That was her testimony yesterday. Was that customary for the Governor's office to express views early on, about what buildings they wanted to have State leases in?

Ms. WRIGHT. We never did that. And I don't believe we did it in this case.

Mr. CHERTOFF. So you don't agree with her testimony.

Ms. WRIGHT. I have an enormous respect for Helen Herr. I'm not saying I disbelieve it. I'm saying something is not jibing.

Mr. CHERTOFF. By the way, you didn't have any policy or rule in effect at this time or just even a practice of having the Governor screen himself out from making decisions where there was an economic benefit to Mr. McDougal. I am not talking about general regulatory decisions, but a decision like this, where it was \$300,000 of lease payments over 5 years. I mean, that was a very nice piece

of business for a commercial landlord to have a guaranteed 5-year tenancy, for \$300,000, from a very responsible tenant who is not going to go bankrupt.

You didn't have any rule or principle—because of McDougal's business relationship with the Governor on the personal side, that the Governor ought to keep out of any issues that might have a financial impact on Mr. McDougal?

Ms. WRIGHT. Any interest that we had about a State agency having rental property in that area was of an interest in seeing the area develop. It had nothing to do with Jim McDougal.

Mr. CHERTOFF. So when Ms. Herr testified yesterday, as she did in her deposition, that she was told that one of the reasons the space was supposed to go into that building was because the Clintons and the McDougals were friends, she was wrong? You don't agree with that?

Ms. WRIGHT. I didn't tell her that. The Clintons didn't tell her that. Mr. Chertoff, one of the wonderful things about Arkansas that is always interesting but also gets you in trouble sometimes—and I bet this happens in other States too, it certainly did in Texas where I grew up—is that people invoke the name of an authority figure like the Governor frequently with great license. We never directed that—I think it was the housing authority at that time, we didn't direct that they go into that building. It had nothing to do with Jim McDougal that I then insisted that they comply with SBS decision.

Mr. CHERTOFF. I'm out of time.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, my recollection of yesterday's testimony is a lot different than Mr. Chertoff's. My recollection is that Mr. Mallard testified that he was the one who identified the Madison property as appropriate for the moving of the housing authority. He testified that it was consistent with the policy of selecting a downtown location, if that were possible, and particularly one in the Quapaw Quarter which was targeted for redevelopment. There was no one on the panel who disagreed with that.

Moreover, the notion that someone was told to select this property because of a relationship between Mr. Clinton and Mr. McDougal was rejected by the people on the panel who testified here under oath. What they did say was that when Mr. Epes sent a letter which was requested by his deputy because some of the employees of the housing authority expressed concerns about safety issues, that he felt he was obliged to sit down and discuss that matter. Essentially, to be the ombudsman carrying the concerns forward to the Governor's office. He did that.

Mr. Epes was very candid in saying he lived in that area himself, and he had no concerns about safety. Indeed, when balanced against the economics of the deal, the space that was available for contiguous expansion, and the policy of helping to resuscitate an economically downtrodden area, albeit a historic one, of Little Rock, the safety concerns were not that significant.

Moreover, the testimony yesterday was consistent that the safety concerns were never realized, fortunately, in terms of any incidence of violent acts to which the employees of that agency were sub-

jected. Mr. Epes said he was entirely satisfied with the Madison property. When it came time to expand, they took an additional 1,400 square feet of space.

The notion that this was a quid pro quo for Jim McDougal throwing the Madison fundraiser, I think, was soundly rejected by every member of the panel yesterday. The proposition that the agency was led to expand and that the expansion space was somehow this big payoff for having a fundraiser at the Madison Savings & Loan, was roundly rejected as preposterous.

Ms. WRIGHT. It is preposterous. It is a preposterous allegation, and I might point out and I don't know whether it was pointed out yesterday, when the agency did continue to grow after we changed the nature of it, legislatively, that they did move to another downtown property which had been more seriously depressed and abandoned by station, and that one happened to be owned by a right-wing Republican opponent of the Governor's, but we were thrilled in encouraging the move to that building.

Mr. BEN-VENISTE. And I trust that there was a similar expression of dismay by the employees of the agency because the new location was also beset by crime and they would be imperiled, and so forth and so on.

Ms. WRIGHT. There was.

Mr. BEN-VENISTE. But, that was overcome and the agency was moved there?

Ms. WRIGHT. That's correct.

Senator SARBANES. This Quapaw Quarter, it has improved over the years; is that correct?

Ms. WRIGHT. Parts have enormously, but it is not all the way through. We still have a ways to go.

Senator SARBANES. I understand that it's generally credited that the location of the agency was helpful in the subsequent improvement that took place?

Ms. WRIGHT. We believed that, yes.

Mr. BEN-VENISTE. The \$33,000 raised at this fundraiser in 1985 has been identified in several theories that have been expressed before this Committee. It has been expressed as being the quid pro quo for getting off leases. Although the witness who testified yesterday about having made such an allegation recognized that he was merely "saber rattling," I think a euphemism for outright fabricating, because it was shown quite clearly that the fundraiser occurred a year after the property was rented.

Then we have, in 1987, the suggestion that after Governor Clinton vetoed water and sewer legislation which resulted in one of the contributors complaining that, "my gosh, you better remember that back in 1985, we all raised \$33,000 for you and that you better think about vetoing legislation that affects us." Of course, if there were any such wired-in understanding of support legislatively or otherwise by the Governor's action, it's preposterous to think that the Governor would have vetoed the bill in the first place.

It was passed, according to testimony that this Committee has received, unanimously by both Houses of the legislature. Yet, the Governor vetoed it. When they took out the unconstitutional aspects of it, it again passed unanimously by both Houses of the leg-

islature. It was totally uncontroversial, and indeed, at that point the Governor signed it.

Now in the memo that has been provided to you, "He seemed very angry, I think he prefers you, needs to call Tucker." Governor Clinton wrote one word on that memo.

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. What was it?

Ms. WRIGHT. "Ugh."

Mr. BEN-VENISTE. Meaning that the notion of calling Mr. Tucker and getting involved in such a matter based on this complaint was not something that he wished to involve himself in; would that be fair to say?

Ms. WRIGHT. Either that or that the entire matter was "ugh." You don't—you know, Mr. Randolph, obviously it was rantings. He wants to know if the veto is going to stand. Vetoes stand. There's no way to reverse a veto. So yeah, I mean it was just "ugh."

Mr. BEN-VENISTE. I mean, we have had days of testimony concerning what occurred with respect to that, and I don't mean to burden you with that, except to ask you on the basis of everything that you knew, was there any quid pro quo for the Governor approving water and sewer legislation tied somehow to this fundraiser that occurred 2 years beforehand?

Ms. WRIGHT. There was not only no quid pro quo, but until recently, we never even gave them credit for the amount of money that they did raise. I thought it was much less than what it actually turns out to have been. There was no quid pro quo, and if you're talking big political money, even in our small reasonable State of Arkansas, this is not big political money.

Mr. BEN-VENISTE. Mr. Chertoff, in his prefix to his questioning, somehow wove in Mr. Hale.

Ms. WRIGHT. Yeah, I was confused about that.

Mr. BEN-VENISTE. Well, I think justifiably. Was there any connection of Mr. Hale, that you know of, in 1985, to the contributions that were made at the 1985 fundraiser?

Ms. WRIGHT. No, sir, not at all.

Mr. BEN-VENISTE. The fact that some of these individuals may have done business with Mr. Hale does not to my mind suggest that Mr. Hale was somehow involved in this fundraiser, or that Mr. Clinton should have known that. Does it suggest that to you?

Ms. WRIGHT. It does not suggest that. We were oblivious to Mr. Hale having any business dealings with these people, I believe.

Mr. BEN-VENISTE. Now the idea that the individuals would be associated with Mr. McDougal, however, was nothing that came as a shock to you? Mr. McDougal had arranged for the fundraiser.

Ms. WRIGHT. Correct.

Mr. BEN-VENISTE. Showing you that these individuals had done business with Mr. McDougal was entirely within the expectation that one would have at the time, I presume?

Ms. WRIGHT. Absolutely.

Mr. BEN-VENISTE. He arranged it and presumably, he brought people who were associated with him whom he could lasso into a fundraiser; correct?

Ms. WRIGHT. Correct.

Mr. BEN-VENISTE. Perhaps you could clarify something that I think has been a presumption in this Committee and certainly in the press—about the relationship between Mr. Clinton and Jim Guy Tucker. Because the two of them have served as Governor of the State of Arkansas, there seems to be some presumption that they are good buddies and have been political allies. I wonder whether you could provide us with your understanding of what that relationship was, based on your own observations.

Ms. WRIGHT. It was a civil relationship, but distant. As I had earlier, Mr. Tucker being at this fundraiser was my first encounter with him since the 1982 primary where he also ran, and we defeated him. I think it's very difficult to, when there is a tough race like that, to expect people to be great buddies. They weren't great buddies. There was a rivalry. There was a tension. Mr. Tucker proceeded to become exceedingly wealthy, and I have always questioned which one really lost that election.

Mr. BEN-VENISTE. I don't have anything further.

The CHAIRMAN. Mr. Chertoff.

Ms. Wright, we could do one of two things.

Ms. Wright.

Ms. WRIGHT. Yes, sir.

The CHAIRMAN. We could take a break now or we could attempt to finish up so we don't have to come back. I will defer to you at this point.

Ms. WRIGHT. That is a wonderfully heavy responsibility.

The CHAIRMAN. Well, no—

Ms. WRIGHT. A short break would be nice.

The CHAIRMAN. Why don't we take a 5-minute break, and see if we can't conclude this without having to take a break for lunch; all right? That will be our goal.

Ms. WRIGHT. Fine, thank you.

Mr. BEN-VENISTE. How much questioning does Mr. Chertoff still have, do you know?

The CHAIRMAN. Do you have about a half-hour?

Mr. CHERTOFF. About 20 minutes to a half-hour. I think we could possibly do that.

The CHAIRMAN. So that we can operate with a little more humanity for everybody, why don't we take a break until 2 p.m. We will resume at 2 p.m. because I know what's going to happen. We tell you 20 minutes to a half-hour, then the other side is going to have some time, they will probably take less but we will probably go a lot longer than we anticipate. Everybody is going to be uncomfortable, kind of strained, so why don't we break until 2 p.m.

Ms. WRIGHT. Thank you.

[Whereupon, at 12:45 p.m., the hearing was recessed, to be reconvened at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The Committee will come to order.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Wright, in 1992, you wound up working in some capacity, on the Presidential Campaign. Is that right?

Ms. WRIGHT. That is correct.

Mr. CHERTOFF. Let me ask the question this way. You had some involvement in responding to present inquiries on Whitewater in 1992?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Who worked with who on the campaign in getting information to respond to those press questions?

Ms. WRIGHT. Well, we had a division that worked on the Arkansas record. There were a whole lot of people who helped me out.

Mr. CHERTOFF. But who did you work with specifically on Whitewater and the Rose Law Firm and those issues? Who did you get your information from to respond to those types of questions?

Ms. WRIGHT. Those are two different types of questions. The Rose Law Firm, if I received a new question, I generally would call the person who seemed to me to be the most appropriate person at the Rose Law Firm to ask for whatever facts they could share with me.

Mr. CHERTOFF. Who, the names? What are the names of the people you would deal with?

Ms. WRIGHT. Well, it depends on what the issue was. But the managing partner—is that what you call them in law firms, the managing—I think Webb was most often the person I called.

Mr. CHERTOFF. Webb Hubbell?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. And also Vince Foster?

Ms. WRIGHT. I don't think I ever called Vince, but I may have.

Mr. CHERTOFF. Did you talk to Mrs. Clinton about questions involving the Rose Law Firm?

Ms. WRIGHT. I talked to Mrs. Clinton about any answer I had drafted which concerned her.

Mr. CHERTOFF. Did you deal with Susan Thomases on the Rose Law Firm?

Ms. WRIGHT. I don't recall doing so.

Mr. CHERTOFF. With respect to Whitewater, did you deal with or talk to Mrs. Clinton about Whitewater?

Ms. WRIGHT. Most of the Whitewater research and initial flurry occurred before I came to the campaign. Like the Gerth story in The New York Times came out before I came back to Arkansas to the campaign. So I used, you know, what had built up from there, from that research. The Lyons report was in process at that point. And then I think the first really official thing I did was be a part of issuing that report from the campaign.

Mr. CHERTOFF. Was there a point in the campaign that you became aware of the possibility that there were criminal referrals in the pipeline that dealt with or mentioned the Clintons?

Ms. WRIGHT. I don't think so, Mr. Chertoff.

Mr. CHERTOFF. Do you recall an RTC investigation that might touch on the Clintons at some point during the campaign?

Ms. WRIGHT. I did, yes, sir.

Mr. CHERTOFF. How did you come to hear about it?

Ms. WRIGHT. I received a call from someone in California.

Mr. CHERTOFF. Who?

Ms. WRIGHT. I don't know. Who had talked to somebody they knew there, a lawyer who had just returned from a business trip to Kansas City and while at a cocktail party in Kansas City, a woman had mentioned to him that there was—I don't believe RTC was a phrase used—but a referral about an S&L officer which would implicate the Clintons in Arkansas. It was a very cryptic rumor.

Mr. CHERTOFF. Who told this to you?

Ms. WRIGHT. I don't know the name of the person.

Mr. CHERTOFF. You mean some stranger just called you?

Ms. WRIGHT. They do every day.

Mr. CHERTOFF. Any stranger was able to get through to you directly during the campaign, and pass on information like this?

Ms. WRIGHT. Absolutely.

Mr. CHERTOFF. So you're not telling us you don't remember who called you. You're just telling us you don't know the identity of the person who communicated the rumors to you?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. It wasn't Jack Palladino, by any chance, was it?

Ms. WRIGHT. Oh, no, sir. Mr. Palladino worked for me.

Mr. CHERTOFF. Mr. Palladino was an investigator?

Ms. WRIGHT. He was an attorney who was working with me on the campaign.

Mr. CHERTOFF. So you get this information from someone you don't know. What do you say to that person? Did you ask them for details?

Ms. WRIGHT. I think I had all the details that person had.

Mr. CHERTOFF. What did you do next? Did you try to run down the story?

Ms. WRIGHT. I called a criminal defense attorney in Little Rock who I knew and asked him if there was some kind of consideration of an indictment or criminal referral in a Federal Court in Arkansas, was there any way to find out about it that was legal and ethical, et cetera, and he told me that there wasn't.

Mr. CHERTOFF. Who was the person you called?

Ms. WRIGHT. Bill Wilson.

Mr. CHERTOFF. He's now a judge?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Appointed by President Clinton?

Ms. WRIGHT. Correct.

Mr. CHERTOFF. You did this on the basis of a call from a person who didn't identify themselves to you?

Ms. WRIGHT. Actually sir, the person probably did identify himself to me.

Mr. CHERTOFF. Did you make a note of the call?

Ms. WRIGHT. Not that I have been able to find.

Mr. CHERTOFF. It's somehow not around anymore?

Ms. WRIGHT. I may have, but I haven't located it.

Mr. CHERTOFF. Mr. Wilson told you you couldn't find out if there was any kind of indictment or something pending because there was no way to do that?

Ms. WRIGHT. Correct. Those procedures are all in confidence.

Mr. CHERTOFF. So what did you do next to find out what was going on?

Ms. WRIGHT. Nothing. There wasn't anything I could do.

Mr. CHERTOFF. Did it concern you?

Ms. WRIGHT. Well, I think I actually just thought it was a rumor. I tried to guess whether we had any friends that might be in criminal trouble, and I struck out there.

Mr. CHERTOFF. Did you try to guess yourself, or did you enlist someone else in trying to guess? Did you enlist Mrs. Clinton in trying to guess?

Ms. WRIGHT. I don't think so.

Mr. CHERTOFF. Did you and Mrs. Clinton discuss whether there was anybody you both knew, any mutual friend involved in the savings and loan business, who might be the subject of this investigation?

Ms. WRIGHT. I might have. I don't recall doing it. It wasn't particularly notable if I did.

Mr. CHERTOFF. Isn't it a fact that you actually went scrambling around to try to find out about this?

Ms. WRIGHT. On my scale of scramble? No, sir.

Mr. CHERTOFF. Let's go back to that deposition that Mr. Giuffra took on January 26th, page 156. Got it?

Ms. WRIGHT. Yes, sir. I do.

Mr. CHERTOFF. Page 156:

Question: When did you learn of this investigation, RTC investigation?

Answer: Well, the first time I heard about it was in the fall of 1992, and at that point I regarded it—there was no way to verify it. So, I didn't know whether it was true or not. I now know it was.

But in about September or October of 1992, some RTC official at a cocktail party in Kansas City told somebody who supported Bill Clinton from California who was visiting in town that they had just sent a criminal referral up to the prosecutor in Little Rock. And that is all I was given over the phone. I went scrambling trying to find out what on earth they were talking about.

Did you give those answers in response to the question in the deposition?

Ms. WRIGHT. Yes, I trust that this is correct.

Mr. CHERTOFF. Do you want to change your answer now?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. You said that's correct?

Ms. WRIGHT. You may have had enough exposure to me now to know that I pull out funny words sometimes.

Mr. CHERTOFF. I beg your pardon?

Ms. WRIGHT. I pull out funny words sometimes.

Mr. CHERTOFF. I want to ask you again, did you discuss this with Mrs. Clinton? Did you take it seriously enough to sit down with Mrs. Clinton and try to put your heads together to figure out who this might refer to?

If you need some help, it's page 164:

Question: Other than this communication with the person from California about a criminal referral during the campaign, did you have any other communication with anyone about criminal referrals?

Answer: I remembered I asked Hillary if she was aware of any friend of theirs who was in the savings and loan business who might be under criminal investigation, and we couldn't think of anybody.

Did you have that conversation with Mrs. Clinton during the fall of 1992?

Ms. WRIGHT. Yes. I don't think I would have pulled that out of thin air.

Mr. CHERTOFF. So you recall having the conversation?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. You two couldn't think of anybody that you knew in the savings and loan business, who was a friend of the Clintons, who might be under criminal investigation?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. The name McDougal did not come to mind?

Ms. WRIGHT. It didn't.

Mr. CHERTOFF. Of course at that time, you knew Mr. McDougal had already been tried once for some criminal activity relating to the savings and loan, right?

Ms. WRIGHT. That's correct. I didn't regard him as any longer a savings and loan official.

Mr. CHERTOFF. Had you heard that Mr. Clinton actually had helped Mr. McDougal with the opening statement that the lawyer gave in his trial back in 1989?

Ms. WRIGHT. I didn't know that until the very recent accounts of that.

Mr. CHERTOFF. Do you know it now?

Ms. WRIGHT. What I know of it is only from the recent accounts that have come out in press stories about that.

Mr. CHERTOFF. Did you learn during the campaign that Loretta Lynch and Jim Blair went down to talk to Mr. McDougal about his relationship with the Clintons and some of the issues that had arisen in the campaign?

Ms. WRIGHT. I am aware that they did, yes.

Mr. CHERTOFF. Did you learn that one of the things they heard from Mr. McDougal was that he had, at least at that moment, warm feelings for Mr. Clinton because in part he believed Mr. Clinton had been sympathetic and Mr. Clinton had helped him with the opening statement in the trial?

Ms. WRIGHT. Probably. I don't remember it.

Mr. CHERTOFF. Neither you nor Mrs. Clinton, at this point in time, when you're trying to think of any friend of yours who was in the savings and loan business who might be under criminal investigation, McDougal never came to mind?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Even after all the publicity about Whitewater and Madison Guaranty that had been in the press earlier in 1992? Do you remember Mr. Gerth had written some articles about Mr. McDougal and Whitewater?

Ms. WRIGHT. I didn't have any more information than that. We had had a number of S&L problems in the State, far bigger and more serious than the Madison one as an S&L problem. I soon discarded this, and any conversation I had with Hillary didn't encompass very many seconds.

Mr. CHERTOFF. Let's keep this in mind, the issue of this referral involving, or the information about a possible referral involving a savings and loan executive, and ask whether you were the person

who was kind of supervising campaign files during 1992? Did you have that as part of your job responsibilities, handling the files?

Ms. WRIGHT. Supervising campaign files?

Mr. CHERTOFF. Handling the files, the informational files that the campaign used for responding to issues being raised by the press?

Ms. WRIGHT. I had files regarding Governor Clinton's Arkansas record and then I collected information about allegations about him personally that came up. I guess, Mr. Chertoff, it's very difficult for me to articulate this. You can't imagine the number of rumors of dastardly deeds and undeeds involving the Clintons that were conveyed to me on a daily basis. And this was a nothing rumor.

Mr. CHERTOFF. Ms. Wright, earlier in 1992, national media attention had been focused for a period of time on Whitewater and McDougal. You're not telling us that by the fall of 1992, you had forgotten that Mr. McDougal ever had a position with the savings and loan?

Ms. WRIGHT. No, sir. But I also know that it had been quite awhile since he was in a savings and loan, that he'd been tried and acquitted.

Mr. CHERTOFF. This issue—

Ms. WRIGHT. Listen. I knew very clearly that the Clintons had not been involved in anything with Mr. McDougal that involved wrongdoing, and so it would never occur to me that there was some criminal rumor going on about it.

Mr. CHERTOFF. Then you didn't dismiss this rumor out of hand? You made inquiries?

Ms. WRIGHT. I did not dismiss any rumor out of hand, Mr. Chertoff.

Mr. CHERTOFF. You sat down with Mrs. Clinton to talk about it?

Ms. WRIGHT. I did.

Mr. CHERTOFF. Did Mr. Hubbell ever tell you that he was taking files out of the Rose Law Firm?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Were you aware, from any other source, that Mr. Hubbell or Mr. Foster were taking files out of the Rose Law Firm so they could be used by the campaign?

The CHAIRMAN. We'll get back to that because the light is on, and we are going to go to Senator Sarbanes and Mr. Ben-Veniste.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Wright, let me go into this matter of the cocktail party conversation because this is obviously very troubling. Do you recall at what point in time you received this information. Was it fairly close on to the actual election?

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. Are we talking about the fall of 1992?

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. Can you tell us again what it was that you recall having heard from this caller?

Ms. WRIGHT. That an acquaintance of this caller had been in Kansas City at a social function and a woman there told him that there was a consideration in Federal Court in Little Rock of an S&L official's criminal misdeeds that the Clintons were very close to. The Clintons were very close to this official.

Mr. BEN-VENISTE. This was overheard by a third party, not the person who called you?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Did you say that this cocktail party was being held in Kansas City?

Ms. WRIGHT. Yes, sir. That was what I was told.

Mr. BEN-VENISTE. The speaker was a woman?

Ms. WRIGHT. Who conveyed the information.

Mr. BEN-VENISTE. Conveyed the information. At that time, did you have any idea that the RTC had assigned anyone from its Kansas City office to investigate Madison Guaranty Savings & Loan?

Ms. WRIGHT. None whatsoever.

Mr. BEN-VENISTE. Based on the testimony we have received, the principal investigator in the fall of 1992, was trying to pressure the FBI in Little Rock to open an investigation and to proceed with a Grand Jury on Madison Savings & Loan, and had identified Mr. and Mrs. Clinton as witnesses in connection with that investigation. But you didn't know anything about that?

Ms. WRIGHT. No, sir.

Mr. BEN-VENISTE. But apparently someone in Kansas City at a cocktail party was talking about a highly confidential matter involving a Federal investigation and stated that Mr. Clinton would be implicated, by association, with an individual who was under investigation.

Ms. WRIGHT. Yes, sir.

Senator SARBANES. Now this was in the fall of 1992?

Ms. WRIGHT. That's correct, sir.

Senator SARBANES. How far ahead of the election?

Ms. WRIGHT. Very near the election. It was September or October, weeks before the election.

Senator SARBANES. September or October of 1992. This conversation was then reported to you by a friend, is that it?

Ms. WRIGHT. I didn't know the person.

Mr. BEN-VENISTE. And if I understand your testimony at page 157, during deposition, I believe Mr. Giuffra asked you who was the person that contacted you. You said a friend of this person from California who was at a cocktail party with somebody from the RTC. Did that indicate that the individual who supposedly made this statement was somehow associated, so far as you were told, with the RTC?

Ms. WRIGHT. It should have. I didn't know from beans what the RTC was, so I didn't associate it with anything.

Mr. BEN-VENISTE. Obviously if in fact it was someone from the RTC, making this kind of a statement at a cocktail party, that would be most improper and very troubling. Let me go to the question of your attempts to find out whether there was any truth to this rumor.

When you say, in response to Mr. Chertoff's questions, that it did not occur to you that the individual who was being discussed was Jim McDougal, I think you said, first of all, Mr. McDougal had been out of banking for quite some time. Indeed, he had left the Madison Guaranty Savings & Loan in 1987. This conversation was in 1992, correct?

Ms. WRIGHT. Correct.

Mr. BEN-VENISTE. Mr. McDougal had already been prosecuted in Little Rock for alleged improper operation of Madison Savings & Loan and had been acquitted?

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. For those two reasons, it did not occur to you that someone would resuscitate an investigation against an individual who had long been out of banking and had been tried and acquitted for alleged misdeeds associated with running the bank?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Let me take up a matter which has been discussed here over the last couple of days, and that is the second McDougal property which was a gas station which had then been renovated into office space.

We had testimony yesterday from our panel, including a former State building official, who testified that indeed the Revenue Department office, which was relocated on 16th and Main Street, also in the Quapaw Quarter of Little Rock and is still operating. The people have found that location to be convenient from the standpoint of serving the public, and convenient and acceptable from the standpoint of the individuals who have been moved there from their prior location? Is that consistent with your understanding of that office facility?

Ms. WRIGHT. Yes, sir. It was absolutely fabulous to be able to put a government service office in that area of town, and the gas station locale made it particularly convenient for people to visit. I don't remember linking it to McDougal or what; the main thing was providing the service to people in that area.

Mr. BEN-VENISTE. The implication again was this was something that had been instigated by the Governor's office and crammed down the throats of the agencies involved, including the building services people and the agencies involved. Fortunately, we have a record on this. That is what this Committee's staff does when they are not doing these hearings; they are doing depositions and other inquiry.

With the Chairman's permission, I would like to read from the testimony of Morris Patterson. May I, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Mr. Patterson gave his sworn deposition on February 16, 1996. Mr. Patterson was the leasing manager of the State Building Services Administration. And at page 35 of his testimony, he stated, in response:

Question: Now how did that lease come about?

Answer: Well, the Revenue Department told me they wanted to go into the space and they wanted to move from over on Wealth Street.

Question: Hold on for a second. The Revenue Department wanted to move from which street?

Answer: Wealth Street.

Question: How do you spell that?

Answer: W-e-a-l-t-h, from Wealth Street. It was east of there. And then they were being robbed frequently and they wanted out of the old building. They—they were broken into I don't know how many times. I would say more than two or maybe three or four times. And they wanted to move out of there, and I don't know how they found this old service station here that Madison owned at the time, but they wanted to move in it, and I was directed to do it.

Question: Who directed you to do it?

Answer: John Cox was the Administrator at that time, and, of course, since that time he has—he is no longer with us. He is dead at this time. And he wanted to

go in it, so I proceeded to work up some plans on it, and we went in the—renovated the old service station.

Question: John Cox was Administrator for which agency?

Answer: Department of Finance and Administration.

Question: Now, he went to you directly about this, or went to your supervisor, Helen Herr or Helen Vowell?

Answer: He called me—he talked to me about it.

Question: Why did he talk to you directly instead of going through your supervisor?

Answer: Well, now, that I couldn't answer you there, sir, because—it would be guesswork on my part.

Question: Didn't you have to get approval from your supervisor?

Answer: Yes, she knew about it and she approved it or it never would have happened.

Question: Were there other buildings with available space at a similar price or a price that was less expensive than that at the time?

And then he responded to that.

In terms of all of the questions and the memorandum contemporaneously made on November 7, 1985, it is all papered and documented that the agency wanted to move out of its quarters. It located the 16th & Main Street location. Renovation was made, the plans were acceptable. The agency moved in. It was happy to do so, and it's still apparently happy to be there.

So another one of these allegations, when you look at the facts and you look at the testimony that has been developed by this Committee, there is a refutation of the notion that this was some political payback or favor, I guess pay forward would be more appropriate under the circumstances.

Now, I think at this time, Mr. Chairman, we can save some time by ceding our time back.

The CHAIRMAN. I thank Counsel.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, I have a few questions. I will try to move as fast as I can.

Ms. Wright, did you keep files from the 1992 campaign? Did you keep the campaign files from the 1992 campaign? Didn't you keep those files?

Ms. WRIGHT. I'm not exactly certain which files you're asking me about, Senator.

Senator SHELBY. I'm talking about the 1992 Presidential Campaign. Did you keep those files?

Ms. WRIGHT. I kept some that were in my office. There were probably 2,000 or 3,000 storage boxes of files from the campaign.

Senator SHELBY. Which ones did you keep?

Ms. WRIGHT. From my office?

Senator SHELBY. Yes.

Ms. WRIGHT. I kept, I took from my home, I mean, I took from my office about 10, 11, 12 boxes. You understand in my section, I had 2,000 boxes that I had compiled or pulled together containing Bill Clinton's entire public record, all of his campaigns. I had gone all over Little Rock getting these boxes out of storage, pulling them together. So I only took a few things which included personal items and correspondence, areas that I thought might come up again that the White House staff might need access to.

Senator SHELBY. Like what for example? You said things that the White House staff might need. In response to other things?

Ms. WRIGHT. Yes, sir. I tried to put a copy of all of the press questions and our answers to them in those boxes. I mean, I'm big on consistency and checking with what's been said before. There were a couple of people who said they might write books and so the information I gathered about that that came up during the campaign were in there.

Senator SHELBY. Ms. Wright, did you ever have the billing records or the Madison files?

Ms. WRIGHT. No, sir.

Senator SHELBY. Have you ever seen them?

Ms. WRIGHT. The billing records?

Senator SHELBY. Or the Madison files?

Ms. WRIGHT. I have seen the Rose Law Firm billing records.

Senator SHELBY. Where did you see those?

Ms. WRIGHT. When I did my deposition with Mr. Giuffra, he showed them to me.

Senator SHELBY. Did you do financial disclosures? Did you prepare those?

Ms. WRIGHT. For the campaign in 1992? I did not.

Senator SHELBY. You did not?

Ms. WRIGHT. No. My responsibility was defense of the Arkansas record and the Clintons' character.

Senator SHELBY. In January 1994, you traveled to Little Rock, did you not, to gather finance records from Mr. Clinton's Gubernatorial Campaign or Campaigns?

Ms. WRIGHT. That's correct.

Senator SHELBY. Who told you to go to Little Rock?

Ms. WRIGHT. No one did, sir.

Senator SHELBY. You did it on your own?

Ms. WRIGHT. I did it on my own.

Senator SHELBY. Why did you travel down there? Couldn't you have gotten someone to box them up, if they were boxed up, and send them to Washington? Or did you feel like you needed to go down there and go through them and see what was pertinent to whatever your inquiry might be?

Ms. WRIGHT. Well, there weren't people, quote, down there who might necessarily recognize the Gubernatorial Campaign. I mean, I was frustrated because now we had people working there who didn't know the difference between the Gubernatorial office and the Gubernatorial Campaign and the Presidential Campaign. And it drove me nuts because of course—

Senator SHELBY. You had been through all of them so you knew?

Ms. WRIGHT. I was continuing to get press questions about various contributors in the past or about campaign finance questions. The White House would call me up and ask me questions about them. And I finally said, I have got to have the records here where I am so I can look them up because I'm no good about guessing. I try to operate from facts. So I finally got fed up with not having the documentation, so I went to Little Rock and identified a number of boxes which they then shipped to me.

Senator SHELBY. Where were they stored in Little Rock?

Ms. WRIGHT. Whatever you call the legal entity that exists after a Presidential Campaign had leased space in a storage facility.

Senator SHELBY. Did you say in your deposition that you found Whitewater records at the storage facility?

Ms. WRIGHT. I found one small box, yes.

Senator SHELBY. Were those records indexed? Weren't they indexed?

Ms. WRIGHT. No.

Senator SHELBY. Are you sure? Are you positive?

Ms. WRIGHT. Well, I guess, I am not certain what you mean by indexed.

Senator SHELBY. An index showing what you could find in the records. An index would speak for itself, wouldn't it?

Ms. WRIGHT. I think so. They weren't. One of the things that was very disappointing to me is that of the 2,000 boxes from all of Governor Clinton's years as Governor, Attorney General, the stuff that we had compiled during the 1992 campaign, they just put Betsey Wright on all of them. That was the name of them. So I didn't regard that as a very helpful index.

Senator SHELBY. Let me ask you this. Were the boxes indexed as opposed to the files being indexed?

Ms. WRIGHT. No, sir.

Senator SHELBY. The boxes were not indexed?

Ms. WRIGHT. No, sir.

Senator SHELBY. You're saying the files weren't indexed either?

Ms. WRIGHT. There were some file folders inside boxes that had names on the file folder, yes, but there wasn't a directory within a box. No, sir, these things were just sort of cavalierly thrown in. And, you know, I would identify numbers of boxes, have them bring them to me in a room, open them, quickly go through, see if they were campaign finance records. Most of these were the large banker's boxes. There was one small cardboard box. When I opened it up, it did have Whitewater Development Corporation bank statements or receipts or something in it, yes.

Senator SHELBY. You looked at the documents, in other words?

Ms. WRIGHT. I didn't.

Senator SHELBY. You didn't look at them at all?

Ms. WRIGHT. I didn't take anything out and look at it. I saw that it was Whitewater Development. I knew that things were being given to the Justice Department under subpoena at that time about Whitewater, and that clearly this would be responsive.

Senator SHELBY. So you didn't look at the contents of the documents at all?

Ms. WRIGHT. I could visibly see that they were some kind of financial records, yes, sir.

Senator SHELBY. But as far as searching through them?

Ms. WRIGHT. No, sir, I didn't.

Senator SHELBY. For content you didn't do that?

Ms. WRIGHT. No, sir. Which is consistent with my not really wanting to know the details of all this.

Senator SHELBY. But you did know that there were Whitewater documents before your eyes, didn't you?

Ms. WRIGHT. Yes, it said Whitewater Development on it.

Senator SHELBY. Did you talk to Mr. Bruce Lindsey about what you had found?

Ms. WRIGHT. I did. I called to tell him.

Senator SHELBY. From Little Rock?

Ms. WRIGHT. Yes, sir.

Senator SHELBY. What was his response when you called him from Little Rock to tell him that you had found Whitewater documents? What did he tell you?

Ms. WRIGHT. I don't know what your experience with Bruce Lindsey is. My experience has been that it's been very difficult to get him to say stuff back. I feel like I have one-way conversations with him.

Senator SHELBY. Well, it wasn't completely one way. Did he say hello or anything when you called him?

Ms. WRIGHT. He does, but I don't think that that would count as a response. To my telling him, it basically was, oh, that's interesting. I need to get them to David Kendall, the Clintons' attorney.

Senator SHELBY. Did he say that to you?

Ms. WRIGHT. I said that.

Senator SHELBY. You said I need to get these Whitewater records to David Kendall the attorney of record for the Clintons, right?

Ms. WRIGHT. Yes.

Senator SHELBY. What did Bruce Lindsey say about that?

Ms. WRIGHT. I think I told him that I had learned that Mr. Kendall was on his way.

Senator SHELBY. No, let's go back. What did Mr. Lindsey say in response to your statement, I need to get these Whitewater records to David Kendall? Did Mr. Lindsey say something? Did he say nothing? Did he sigh?

Ms. WRIGHT. The rest of my sentence to Mr. Lindsey was, I have now learned that Mr. Kendall is on his way here for Virginia's funeral, and so I intend to give them to him when he arrives. He said, fine, good idea.

Senator SHELBY. Did Bruce Lindsey, did you all disconnect your telephone then? Was there any other conversation about this?

Ms. WRIGHT. No, sir.

Senator SHELBY. How many records are you talking about you were going to give to Mr. Kendall dealing with Whitewater?

Ms. WRIGHT. It was a small box, as I recall, a brown cardboard box about this big.

Senator SHELBY. A file box?

Ms. WRIGHT. No, it wasn't a file box. It was like you could get a package from a catalogue order in of a small item because I did ultimately carry it back in my arm on the airplane so it wasn't large.

Senator SHELBY. How many days or hours did you spend at the storage facility looking through these records?

Ms. WRIGHT. Actually, longer than I spent in deposition with this Committee.

Senator SHELBY. How long, in your best judgment?

Ms. WRIGHT. I spent like 2½ to 3 days going through boxes.

Senator SHELBY. What did Mr. Kendall say to you when you gave him the documents? You said you were going to give them to him. Did you, in fact, give the Whitewater documents to Mr. Kendall?

Ms. WRIGHT. Eventually I did, yes.

Senator SHELBY. Did you do it when he came to Little Rock?

Ms. WRIGHT. No, sir.

Senator SHELBY. Did you take the documents back to Washington yourself?

Ms. WRIGHT. Yes, sir.

Senator SHELBY. How long was it before you gave them to Mr. Kendall?

Ms. WRIGHT. One day.

Senator SHELBY. What did he say, in response, to the records when you gave them to him? Did he do like Mr. Lindsey and didn't say anything?

Ms. WRIGHT. I don't recall a conversation. I think actually a courier came from his firm to get them from me.

Senator SHELBY. You didn't give them to him yourself, did you?

Ms. WRIGHT. No, sir, I didn't.

Senator SHELBY. That's all I have, Mr. Chairman.

The CHAIRMAN. I want to ask you something if I might.

Ms. WRIGHT. Senator Shelby, I do want to clarify about there being an index. There was an index with whatever identification had been applied to each box. It was not detailed or helpful.

Senator SHELBY. But an index basically is an indicator of what's in a file or a box, is it not?

Ms. WRIGHT. Yes, sir.

Senator SHELBY. That's why we do an index.

Ms. WRIGHT. Yes, sir. And my disappointment was——

Senator SHELBY. My question earlier was whether there was an index. In other words, the boxes were indexed that was my understanding.

Ms. WRIGHT. There are two kinds of indexes, one would be the contents of a box and one would be of all of the boxes.

Senator SHELBY. That's right.

Ms. WRIGHT. The disappointment I had in the progress or lack thereof of indexing those boxes at that time was that just about everything had my name on it as the identifier and it might have had, it then did have a box number, but not any clue as to content.

Senator SHELBY. OK. Go ahead, Mr. Chairman.

The CHAIRMAN. I am going to let others explore the index question. I don't know where we go from there. Obviously you felt a sense of frustration because all these boxes had your name on them, as opposed to having better classifications. Is that what you're saying?

Ms. WRIGHT. Absolutely.

The CHAIRMAN. So instead of it saying, "Campaign 1980 Gubernatorial Campaign 1982," for example, it did not have that? Governor's actions with respect to legislature? This year, that year, the following year?

Ms. WRIGHT. That's correct, they did not.

The CHAIRMAN. I have to tell you I don't know how relevant this is or where we go from here. There's a cocktail party someplace in Kansas City and some RTC official is overheard speaking to someone regarding an RTC criminal referral in which the names of the Clintons come up in conjunction with this possible referral. That

conversation is then reported by someone who overhears these two people to someone in California. Do I have the sequence right?

Ms. WRIGHT. I think that's correct, yes, sir.

The CHAIRMAN. Then that person in California reaches out to you to relay that situation. The fact that they heard this situation taking place at a cocktail party in California. Is that correct?

Ms. WRIGHT. That's correct.

The CHAIRMAN. In Kansas City, excuse me. Let me ask again, you don't know the person who called you to relay that information to you?

Ms. WRIGHT. No, sir, I don't.

The CHAIRMAN. Do you recall if that person identified himself or herself?

Ms. WRIGHT. I believe they did. I just don't recall that it was an anonymous call.

The CHAIRMAN. You know the reason and you then follow that up. You are sufficiently concerned so you contacted an attorney and fill in the story or the details of what was revealed to you. You thought that the story or the details of what was revealed to you was compelling enough.

We all get crank calls once in a while. You did follow through on this? You didn't treat it as a crank, but as something that should be pursued. You called an attorney who handles criminal matters by the name of Wilson in Little Rock, is that right?

Ms. WRIGHT. Yes, sir.

The CHAIRMAN. Let me give you a certain comfort level. I'm not suggesting that there was anything improper or unethical, et cetera. You said, now look, this is what I heard. Is there anyway to ascertain the truth or falsity of something like this going on in which they might drag in Bill and Hillary. After all, they are your principals. You are working for them, and that would be perfectly logical.

He indicates to you that there is no way without interfering for you to do this properly without perhaps creating something that would be more than it is. Is that right?

Ms. WRIGHT. He just told me that there wasn't. I asked if there was a way to know that, and he said no, there wasn't. I turned to him for information.

The CHAIRMAN. All right. Now, I would think that if you were to pursue this to the point that you did, you would really know that person who called you. You would have had a name because you would follow up with a call down to Little Rock to a respected counsel to ask if there is any way we can get a line on this.

You may not have said it in exactly that fashion, but you would seek to get information to verify or to confirm. You would have done that on the basis of someone, and you just didn't pick it up, and that person knew enough to call you.

I dare say, I have been active in the body politic going back to the 1992 campaign. I must confess my ignorance. I wouldn't have known enough to call you. Who do you reach? What Republican operative do you call? I don't mean that in a pejorative sense. Do you call a campaign manager or deputy campaign manager? That's why I think, remember this is an action that you then pursued. You put enough credence in this story. I believe that the conversation prob-

ably did take place in Kansas City and somebody overheard it and called someone in California.

What I am having trouble with is why you wouldn't know who the person was that called you and identified an occasion with such specificity that you saw fit to follow through. That's what leaves me a little bit puzzled.

Ms. WRIGHT. If I might respond, Senator, you of course wouldn't have been inclined to call our campaign with a warning about some new rumors.

The CHAIRMAN. That is fair.

Ms. WRIGHT. Therefore, it wouldn't have been of interest to you who to call. And I certainly would hope I wasn't famous and in a lot of cases I was notorious but I certainly had a higher visibility in terms of newspaper stories, magazine stories, TV coverage than I had wished because of the damage control operation I had set up.

But if I could attempt to give you some perspective, if it seems to you that I did a great deal of follow up on this tip and lead, I got dozens of these kinds of calls a day, dozens. I followed every one. I did a very good job for Bill Clinton in that campaign. And part of the reason is that I didn't assume anything and I didn't ignore anything, and fortunately most of the stuff came to naught.

But for the rest of the stuff, because I followed it up, I was able to find what piece of lint was used to weave the whole cloth. This was a nothing issue.

I think in the deposition I was asked when I first heard about the RTC referral. It is in retrospect that it is all clear to me now what is happening. At that time, I didn't. I called to find out whether I could know more. I called to see if anybody knew of an S&L official in serious criminal scrutiny, and that was essentially all I did. I didn't know anything else I could do. And I still had all these other dozens of calls coming in every day. I mean, I wish I could meet all those people. I really do.

The CHAIRMAN. All right.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Shelby, I understand. We are going to go back. We really do want to move it. I think we have been accomplishing that.

Yes, Senator.

Senator SHELBY. I have a couple of questions, if I could.

The CHAIRMAN. Let me go to the other side, then we'll come right to you.

Senator Sarbanes.

Senator SARBANES. Ms. Wright, first of all, I think it's clear the improper action was the RTC employee. Apparently she was talking out of school, so to speak, and violating all the requirements of confidence at this cocktail party. But when you got the call, how soon after the cocktail party discussion was it? Did they tell you this was something that had just occurred?

Ms. WRIGHT. I seem to recall that it was within 3 or 4 days.

Senator SARBANES. You went to Mr. Wilson to find out if there was some way to find out whether this could be checked out in some public way, is that correct?

Ms. WRIGHT. Correct.

Senator SARBANES. He told you that wasn't the case?

Ms. WRIGHT. That's correct.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. There is no mystery about why you might have been identified as a person to be called by someone who had received that kind of information. As you indicated, you were a person whose name was well known in the press at that point. You were involved in the campaign and, indeed, played the role as, I believe every major campaign has now, somebody who does damage control.

An allegation is made against a candidate in a Gubernatorial or Senatorial or Presidential race and there is a team of people who are working in the campaign who try to get the bottom of it, get the facts out and get it dealt with. You were performing that function. It was a well known fact that you, Betsey Wright, were doing that; correct?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. And once you had put in motion what you felt was an adequate way to try to check this out, you went onto the next project as the day for the election got closer and closer. Right?

Ms. WRIGHT. That is correct.

Mr. BEN-VENISTE. My sense, based on your testimony and from the other facts we have developed before this Committee, is that by the time this matter was prepared and sent over to the U.S. Attorney's Office in Little Rock, it was fairly close to the election. So I imagine this occurred fairly hard by the election date. Is that consistent with your recollection?

Ms. WRIGHT. Yes, sir, it is.

Senator SARBANES. We yield back our time.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Ms. Wright, you were talking about taking a piece of lint, I believe was your metaphor, and weaving it into the whole cloth. We are trying to get at the whole bolt of cloth ourselves. What's troubling to me is why your name would be on the Whitewater files? In other words, who sent the Whitewater files to storage with your name on it? Did you do this?

Ms. WRIGHT. No, sir.

Senator SHELBY. You were the possessor, if we could use the phrase, of the files? In other words, it had your name all over the files, Betsey Wright. Is that right? Or did it have Clinton campaign written all over those boxes of files? In other words, how were they designated? You had 2,000 boxes. What did they say on the boxes? They weren't blank, were they?

Ms. WRIGHT. No. I think that one might have been.

Senator SHELBY. There were 2,000 boxes?

Ms. WRIGHT. There were numbers.

Senator SHELBY. You had a number for the boxes, OK.

Ms. WRIGHT. Yes, sir.

Senator SHELBY. If you had a number, then you have to have an index to tie to the number, would you not, a topical index? Whitewater, Madison, political consultants' names, you know, and so forth. In other words, just having box 1, 2, 3, 4, through 1,000 wouldn't mean anything to you unless you had some inkling of what might be in the box that you were looking for?

Ms. WRIGHT. That is correct, sir. You understand what my frustration was.

Senator SHELBY. Sure.

Ms. WRIGHT. Because they would say Betsey Wright 13, Betsey Wright 27. So I had to go through quickly a whole bunch of file boxes to see if—

Senator SHELBY. Did you go through 2,000 boxes?

Ms. WRIGHT. No, sir. Because among those were some that I had had in storage of the Governor's papers.

Senator SHELBY. You knew what those boxes were?

Ms. WRIGHT. And they were better indexed. So I was able to eliminate them, once I could see them. Betsey Wright 47 happened to have been have the mark from this other index I had from the Governor's office, so I wouldn't have to go through it.

Senator SHELBY. How did you find the boxes that had the Whitewater files without an index? You were looking for the Whitewater files?

Ms. WRIGHT. No, sir. I was looking for finance records.

Senator SHELBY. Finance records. What type of finance records?

Ms. WRIGHT. The political finance records of the Clinton years.

Senator SHELBY. That was the reason you went to Little Rock?

Ms. WRIGHT. That's correct, sir.

Senator SHELBY. You didn't go to Little Rock to look for the Whitewater files?

Ms. WRIGHT. No, sir.

Senator SHELBY. Why did they associate, whoever they is, put Betsey Wright's name on all these files? Why would they—you can identify they better for the Committee than I could—why would they put Betsey Wright's name on the Whitewater files that were in storage?

Ms. WRIGHT. I don't know, sir.

Senator SHELBY. Who is responsible for this?

Ms. WRIGHT. I don't know.

Senator SHELBY. You don't have any idea who was the keeper of these files?

Ms. WRIGHT. No, sir. I wasn't a part of closing down the campaign headquarters and how they collected up all the boxes into storage, I don't know that.

Senator SHELBY. Could that have been Mr. Hubbell?

Ms. WRIGHT. No, sir, I don't think Mr. Hubbell would do that kind of work.

Senator SHELBY. He didn't have anything to do with organizing the files and so forth?

Ms. WRIGHT. My point is they weren't organized.

Senator SHELBY. Somebody organized something and put the Whitewater files in these boxes. Who, that's what we are trying to get?

Ms. WRIGHT. I don't know, I wasn't responsible for that.

Senator SHELBY. You have no judgment on who would put the Whitewater files in a box that you later came upon in storage?

Ms. WRIGHT. No, sir.

Senator SHELBY. Would it have been someone with the Clinton Gubernatorial Campaign? Would it have been someone in the Presidential Campaign?

Ms. WRIGHT. It had to have been Presidential because I had all the stuff in the Presidential Campaign. Senator Shelby, it is possible that that box was among papers that had been brought to the campaign headquarters prior to my arrival when there were some Whitewater documents there. And it had just become stored with all of my other boxes that I added to, to stuff. But by and large, Whitewater documents were not at the campaign during the time I was. So I assume it was a leftover from that that had gone astray and it could have been stored in the same secure rooms that I had fixed for all of the 2,000 boxes. So it could have been, that's why my name was on it.

If it was about Arkansas, I became, for a lot of people who were not from Arkansas, Arkansas? Betsey Wright's in charge of that. It didn't quite go to my head.

Senator SHELBY. Was this designation with your name on it the files Betsey Wright, was that typed or was it written out?

Ms. WRIGHT. There was nothing as neat and orderly as typing these things.

Senator SHELBY. No, let me go back again. Let me ask you the question. You had a box that said Betsey Wright on it, and it had a number on it. As you have indicated, a number on the box, say number 82, did it have on top of the box on the outside Betsey Wright? In other words, it had your name on it, did it not? It's what you have indicated here. If so, if it had your name on it, was it on a label or something that was typed, printed, or written?

Ms. WRIGHT. There was no consistency and there was no typed label and it probably was a magic marker on the side of the box and it didn't have my whole name, it had B.W.

Senator SHELBY. B.W.?

Ms. WRIGHT. Yes, sir.

Senator SHELBY. Did you recognize the handwriting?

Ms. WRIGHT. No, sir.

Senator SHELBY. Were most of the boxes done by the same hand, or do you know?

Ms. WRIGHT. I don't know.

Senator SHELBY. Thank you.

The CHAIRMAN. Mr. Chertoff, we are down to about 5 minutes on a vote that is taking place right now. I'm going to suggest that we take a break, go down and vote. At the conclusion of the vote, we'll try and come right back. We'll take a 10 minute break and maybe another 5 minutes to get back.

[Recess.]

The CHAIRMAN. Mr. Ben-Veniste has several questions. Then we will come back to Mr. Chertoff.

Mr. BEN-VENISTE. Actually, only a couple of questions on this issue of the records that were located and what you did with them. As I understand it, you had expected that someone would catalogue these records or index them. It was not your function to perform this task at the end of the campaign.

When you got down to the warehouse in which they were stored, you found that, disappointingly, the cataloguing simply had your name on a large number of boxes without any further descriptive material, and that wasn't particularly helpful?

Ms. WRIGHT. Right.

Mr. BEN-VENISTE. When you found the documents that contained financial records that you have described were associated with Whitewater, that investment, you advised Mr. Lindsey that you intended to turn them over to David Kendall who was then representing the President in his personal capacity, correct?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Mr. Lindsey didn't tell you to do something else, I take it? Mr. Lindsey listened to your proposal and did not disagree with it?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. You indicated that you had intended to give the records to Mr. Kendall while he was to visit Arkansas?

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. Apparently that did not happen?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Why didn't you turn those records over at that time, do you recall?

Ms. WRIGHT. He didn't want to accept them from me there, and told me just to take them back to DC.

Mr. BEN-VENISTE. So then they were transported by you to Washington, DC. It was a finite, if I understand it, small number of documents?

Ms. WRIGHT. Yes, sir.

Mr. BEN-VENISTE. They fit in a small box. You brought them to Washington, and upon your arrival, you advised Mr. Kendall that they were available, and he sent a messenger over to receive them from you?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. There was never any question about whether he would receive them or about what the contents were or any such questions from Mr. Kendall I take it?

Ms. WRIGHT. No, sir.

Mr. BEN-VENISTE. You said you wanted to give him the records and he was there to accept them. The logistics of that you worked out when you got back to Washington?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Ms. Wright, I just want to make sure I have an understanding of the sequence of events involving your handling of the issue of Whitewater/Madison as it erupted from time to time. You came into the campaign in 1992, and you said one of your responsibilities was to deal with the character issue, right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. I take it, when you came in, you prepared yourself by looking at what had been written, what was out there in the media as to various character questions that had been raised. Is that right?

Ms. WRIGHT. For years.

Mr. CHERTOFF. So you certainly had to be aware of the really voluminous amount of attention paid by The New York Times and The Washington Post and other national papers to the issues of Whitewater, Madison, McDougal, and the work of the Rose Law Firm in the spring of 1992, right?

Ms. WRIGHT. Absolutely.

Mr. CHERTOFF. You certainly were aware, as of the time you came in, that the issue of McDougal, Madison, Whitewater, and the Rose Law Firm was on the front burner on the character issue, is that right?

Ms. WRIGHT. I don't know on the character issue it was on a mini-burner at that point, awaiting a forensic accounting report.

Mr. CHERTOFF. It's against that background that you then get word in the fall of 1992, about a possible criminal referral from the RTC involving a savings and loan, someone who was a savings and loan operator in Arkansas, right? You got that news?

Ms. WRIGHT. It's not in that background, sir. In the campaign, the distance between March and September or October is enormous, several life times.

Mr. CHERTOFF. So your testimony to us is that, notwithstanding the tremendous amount of attention paid to this story by the national media in the spring of 1992, including The New York Times, The Washington Post, and the L.A. Times, that when you got word in September-October of 1992, that there's some story or rumor about a potential referral involving a savings and loan operator in Arkansas, you don't make the connection between McDougal and that referral. That's your testimony?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. You then sit down with Mrs. Clinton. If the record is clear, Mrs. Clinton certainly had conversations during the spring with people like Mr. Hubbell and Mr. Foster about the Rose Law Firm and its representation of Madison and Whitewater and McDougal. She can't figure out that there's any connection or any potential connection between this referral and McDougal, right?

Ms. WRIGHT. Mr. Chertoff, I didn't sit down with her. It was a passing conversation on the phone or something.

Mr. CHERTOFF. While in the passing conversation on the phone, she didn't even say to you, maybe it's McDougal, but you know that he was acquitted so do you think it's McDougal or not. McDougal's name never came up in the conversation between you and Mrs. Clinton?

Ms. WRIGHT. The way I absorbed the information it sounded like some new thing, and as I told you, I no longer even thought of Mr. McDougal as a savings and loan official.

Mr. CHERTOFF. Mrs. Clinton didn't think about it either, at least in her conversations with you, is that your testimony?

Ms. WRIGHT. Clearly, Mr. Chertoff, Mrs. Clinton only heard what I articulated and I don't recall the words, but I know that to me it was like there was something new.

Mr. CHERTOFF. Your character files, did they contain material from the Rose Law Firm?

Ms. WRIGHT. Character files?

Mr. CHERTOFF. The files you had that dealt with the character issue, the Arkansas record. Your set of files that you maintained as Deputy Campaign Manager in 1992? Did they contain information from the Rose Law Firm?

Ms. WRIGHT. On various questions that I had to prepare answers for, I would obtain information from the Rose Law Firm and it was in the files in my office. I think before the last time break, you had

made reference to files from the Rose Law Firm coming for campaign use. That never occurred during the time that I was there.

Mr. CHERTOFF. The information you received from the firm you got from either Hubbell or Foster, right?

Ms. WRIGHT. Or if it was on a business matter, I think there were a couple of items I called Ms. Huber on for information or maybe Hillary's secretary.

Mr. CHERTOFF. Speaking of Ms. Huber, did you at any time during the campaign see or become aware of the existence of Rose Law Firm billing records?

Ms. WRIGHT. I did not, sir.

Mr. CHERTOFF. When you finished with the campaign—

Senator SARBANES. Are those the Rose Law Firm billing records?

Mr. CHERTOFF. For the record, these are the records discovered or at least turned over to us. These are copies of the records that were turned over in January of this year.

Senator SARBANES. They seem to be about the same size they were before.

Mr. CHERTOFF. Pretty recognizable.

Mr. COHEN. So the record's clear and so that we are clear, those are the documents the witness was shown?

Mr. CHERTOFF. Yes, these are the documents the witness was shown in the deposition.

Senator SARBANES. I think she said earlier that this was the first time she had ever seen them.

Mr. CHERTOFF. I think that's right. I just want to be real clear about that. After the campaign was over, after the election, you took your set of files and gave them to Mr. Hubbell. Is that correct?

Ms. WRIGHT. My set of files?

Mr. CHERTOFF. The files you had?

Ms. WRIGHT. They were selected files. The campaign viewed the 2,000 boxes as my files.

Mr. CHERTOFF. I want to know what you viewed as your files?

Ms. WRIGHT. Two thousand boxes.

Mr. CHERTOFF. The files you maintained that you were personally involved in maintaining involving questions about the Arkansas record and character?

Ms. WRIGHT. No, sir. The boxes that I took from the campaign were selected files. I didn't take all of my files. That's 2,000 boxes. I took selected files on issues that were of personal nature that I didn't think belonged mixed up in some warehouse, that I thought the Clintons should have the prerogative to deal with, things that I thought the White House would need to comment on in the future. Now what was your question?

Mr. CHERTOFF. You gave those files to Hubbell?

Ms. WRIGHT. I did.

Mr. CHERTOFF. Everything except the one file you kept?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. The file you kept had to do with a case that you were involved in personally?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. It did not have to do with the Rose Law Firm?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. The next time you dealt with files that were connected with the campaign or with Whitewater was on this trip down to Little Rock in 1994, right?

Ms. WRIGHT. No, sir. I believe that my files were moved from Mr. Hubbell to Mr. Kendall before I went to Little Rock, and I had been over to Mr. Kendall's office then.

Mr. CHERTOFF. So Kendall asked you to come over in the fall of 1993 to look at the files in his office?

Ms. WRIGHT. He didn't necessarily ask me to come look at them, but a lot of the things I kept getting questions about were in those files, so I would go look them up. And at one point, I pulled White-water-related things, questions and answers that we had compiled and stuff, for him.

Mr. CHERTOFF. So then these files you continued to work with in 1993 but as of the time they were in Kendall's possession, you used them in Kendall's office, is that right?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. Did you contact Bruce Lindsey about these issues during the fall of 1993? Did you call him up to discuss some of the issues contained in these files? Was he the person in the White House with whom you dealt on this issue in the fall of 1993?

Ms. WRIGHT. On which issue?

Mr. CHERTOFF. Anything to do with the files you were looking at?

Ms. WRIGHT. Oh no, sir. The files were much broader than that. But I did, you know, Bruce was, I think he had at that time responsibility for some of the damage control issues in the White House, so I might have had a number of conversations with him.

Mr. CHERTOFF. You didn't indicate to him that you were going to go down to Little Rock in 1994, to look at records, campaign records in a storage facility?

Ms. WRIGHT. I told Bruce Lindsey I was going to go get campaign records, that I was tired of not having them here.

Mr. CHERTOFF. You told him you were going to go down in order to get the records and bring them back?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. You also indicated you had a conversation—actually, before I get to that, you made reference to an index of some value, whether it was good or bad, at the storage facility. Whatever happened to that index?

Ms. WRIGHT. I don't know who keeps the index. Whoever the custodian of all of those records is.

Mr. CHERTOFF. You didn't take it with you?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. You also said you had a conversation with Mr. Clinton about David Hale at some point in 1993?

Ms. WRIGHT. I don't remember the date but, yes.

Mr. CHERTOFF. Do you remember the year?

Ms. WRIGHT. No, sir, I don't. But I did have a conversation with Mr. Clinton as the information that he was making some kind of allegations about the President were surfacing.

Mr. CHERTOFF. Was it just you and Mr. Clinton on the phone or was there someone else?

Ms. WRIGHT. I think Hillary was in on that conversation.

Mr. CHERTOFF. Mr. and Mrs. Clinton were on the phone. How did that call come about? Did they reach out for you?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. How long was the call?

Ms. WRIGHT. Half hour or so.

Mr. CHERTOFF. A half hour, maybe 40 minutes?

Ms. WRIGHT. Thirty, 40 minutes.

Mr. CHERTOFF. The discussion was about Mr. Clinton asking you what you knew about Mr. Hale?

Ms. WRIGHT. No. The discussion was about trying to figure out what he was talking about in the allegations about a loan.

Mr. CHERTOFF. As I recall, the allegations, as they were reported in the papers at the time, were pretty straightforward. He alleged that he had three meetings with the President, that they had been in connection with the President urging him——

Senator SARBANES. Are you kidding? Three meetings?

Mr. CHERTOFF. He had three encounters with the President?

Ms. WRIGHT. None of that was public yet, sir.

Mr. CHERTOFF. What were the allegations that you were dealing with? Wait a second. Let me withdraw the question.

Are you saying that at the time you had the conversation with the President and Mrs. Clinton about Mr. Hale's allegations, they had not yet become public?

Ms. WRIGHT. No. All of that kind of stuff had not become public.

Mr. CHERTOFF. When you say all of that kind of stuff, you mean the detail of the numbers?

Ms. WRIGHT. We didn't have information as to exactly what he was alleging, how many times he said he talked to Bill Clinton. It had something to do with pressure on a loan and we were trying to figure out what he was talking about.

Mr. CHERTOFF. You couldn't figure out what the loan was or what he was talking about. Is that your recollection?

Ms. WRIGHT. That's correct, Mr. Chertoff, because he made it up.

Mr. CHERTOFF. I want to figure out what occupied 30 to 40 minutes in this telephone call. If, as you recall it, what happened was that——

The CHAIRMAN. Wait a minute. Let's do this again. Would you attempt to reconstruct the telephone conversation you had with the President and Mrs. Clinton, Ms. Wright? They reached out to you?

Ms. WRIGHT. Yes, sir.

The CHAIRMAN. Is that correct?

Ms. WRIGHT. Yes, sir.

The CHAIRMAN. I'm just trying to get——

Ms. WRIGHT. I understand. No, I received a call from them.

The CHAIRMAN. Where were you at the time?

Ms. WRIGHT. I was at my house and I believe they were at Camp David, so I believe it was on a weekend.

The CHAIRMAN. Did anyone tell you that they were going to call or did they just reach out to you over the weekend?

Ms. WRIGHT. No. When I picked up the phone was the first time.

The CHAIRMAN. In other words, no assistant or aide said, Betsey, would you stay around because the President wants to call. He and Mrs. Clinton are very busy, and you are coming and going.

So to the best of your recollection, there was no scheduled call. It was a weekend? You think they were at Camp David. The phone rings. Go ahead, you tell us what happened.

Ms. WRIGHT. I remember going through on that trying to do a laundry list, checkoff list of government programs that we had that would have ever encouraged or involved an SBA-related loan or private sector projects that we were encouraging. I walked through a notion of who on staff might have ever worked with Mr. Hale because it seemed like this would probably have something to do with economic development. I mean, we came up short with nothing.

During the course of the conversation, the entire conversation wasn't on this, you know. I always want an update on Chelsea and an update on various things, so part of it was about, it was a visit.

The CHAIRMAN. You are saying to us that you went through a compilation of possible areas where the SBA and Mr. Hale may have come into contact with the administration directly or indirectly or even in the private sector where there might be some kind of—

Ms. WRIGHT. Where they might have sought a partnership with him or something.

The CHAIRMAN. Some kind of relationship in which he could make some allegations.

Mr. CHERTOFF. Now in this conversation, as you are trying to ruminate about what this might be related to, did anybody come up with McDougal and say, geez, I wonder if this guy had any connection with McDougal?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. The light didn't go on with respect to McDougal in this conversation either?

Ms. WRIGHT. No, sir. There's no reason that it would have.

The CHAIRMAN. The red light has just come on now. In fairness to our colleagues, I want to know because they have been yielding back time so we can continue to move it, if at this time they would like to undertake any examination.

Senator SARBANES. I think we will take a few minutes. Hopefully we won't use the whole time.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. There was no obvious connection between Mr. McDougal and Mr. Hale in your mind viz-à-viz President Clinton or then-Governor Clinton?

Ms. WRIGHT. Not at all.

Mr. BEN-VENISTE. You were trying to think whether Mr. Hale had some project or some kind of dealings with the State of Arkansas and something that would have required some official action in some way or another?

Ms. WRIGHT. We were just trying to think of any program that we might have sought to involve him in or that he might have approached to be involved in. We couldn't think, I mean we really didn't ever deal with him.

I have to say that if Mr. Chertoff remembers that in some early stage in some early report there was an indication by Mr. Hale that he had three meetings, Mr. Chertoff has got a recollection that differs from mine. Mr. Hale has told a whole bunch of different sto-

ries to different people at different times. And I think there's a pretty clear record of how unclear those allegations have been as time has gone by, and as the motivation may have waxed or waned for Mr. Hale to embellish. But that is a matter which presumably we'll take up when we see Mr. Hale here.

Mr. BEN-VENISTE. In terms of your direct knowledge of Mr. Hale, you had no reason to believe, did you, that Mr. Hale had any business with Mr. Clinton?

Ms. WRIGHT. No. I was certain that he didn't have any personal business with Mr. Clinton.

Mr. BEN-VENISTE. Did you have any reason to believe that Mr. Clinton, in any way, shape or form, encouraged, coerced, cajoled, or otherwise asked Mr. Hale to do anything?

Ms. WRIGHT. No, sir. It never occurred to me then, and I don't believe it now.

Mr. BEN-VENISTE. Thank you.

Senator SARBANES. All right. We yield back our time.

Mr. CHERTOFF. Other than this discussion with the President and First Lady about David Hale, did you talk about David Hale with Bruce Lindsey?

Ms. WRIGHT. It's very likely that I did. I don't recall a specific conversation. Mr. Chertoff, after his allegations became more public, I hardly passed a stranger on the street without cursing about what a sleaze bag, exaggerating windbag David Hale was. So I doubt that anybody who crossed my path, my phone lines, or anything else was spared a diatribe from me about him.

Mr. CHERTOFF. So you became very active in beating the drum of this issue?

Ms. WRIGHT. No, sir, I didn't. I couldn't believe that a man who had so little credibility with us and in the State of Arkansas someone we never dealt with, that basically most of us tried to stay away from because he was kind of sleazy, would suddenly have national credibility. And I didn't understand it. Because I don't think that people from New York and other places are more gullible than people from Arkansas, but something happened.

Mr. CHERTOFF. Now let me turn to another individual whose name I think from time to time came up in your experience and for whom you may have beaten the drum. That is Daniel Lasater. Are you familiar with Mr. Lasater?

Ms. WRIGHT. I am, sir.

Mr. CHERTOFF. Mr. Lasater operated an investment company in Arkansas in the 1980's called Lasater & Company?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. He did business with the State of Arkansas?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. Was he a social friend of the Governor's?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. No?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Did he give contributions to the Governor?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. Did he hold a fundraiser for the Governor?

Ms. WRIGHT. I believe he did, yes, sir.

Mr. CHERTOFF. Did he employ the Governor's brother?

Ms. WRIGHT. At one point he did. I think that might have been before I came to Arkansas. I don't remember the year.

Mr. CHERTOFF. Do you know, or did you learn whether he employed the Governor's brother at the Governor's request?

Ms. WRIGHT. That's, I have always heard that he did. I wouldn't be surprised.

Mr. CHERTOFF. Just to be clear, you always heard that Daniel Lasater employed Governor Clinton's brother at the request of Governor Clinton?

Ms. WRIGHT. I appreciate your asking for that clarification. In the recent years, swirling about Mr. Lasater, meaning in the 1992 campaign when he started coming back up again in news stories, that's when I recall for sure that Bill Clinton asked Dan Lasater if he might have a job for Roger. I don't know that for a fact. But I would be impressed if Mr. Clinton did that for Roger.

Mr. CHERTOFF. But you do know for a fact——

Ms. WRIGHT. Roger had worked for a brief period of time for Mr. Lasater. I think it didn't work out or something.

Mr. CHERTOFF. I was interested in the statement you made in connection with your observations about Mr. Hale. That you wanted to steer away from sleazy people in Arkansas. Was that again in your function as being a gatekeeper for the Governor? Was that one of your roles to kind of protect the Governor from sleazy people who might want to get close to him?

Ms. WRIGHT. It wasn't an official role. I guess it's a mission in my life to ostracize sleaze bags.

Mr. CHERTOFF. In terms of the fundraiser that Mr. Lasater held in October 1984, was about \$50,000 raised?

Ms. WRIGHT. I don't remember, Mr. Chertoff.

Mr. CHERTOFF. Were you involved in that fundraiser?

Ms. WRIGHT. Other than in getting the money spent, no, sir, deposited, banked, recorded, reported, and spent, no, sir.

Mr. CHERTOFF. So you were the Campaign Manager for the 1984 campaign, right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. You do remember Mr. Lasater holding a fundraiser on October 5th?

Ms. WRIGHT. I don't remember the date, but I do remember that he held a fundraiser.

Mr. CHERTOFF. In the latter part of 1984, before the election?

Ms. WRIGHT. Sounds right.

Mr. CHERTOFF. In early January of the next year, the Governor and the State police were discussing the possibility of a new communications system for the State Police. Is that correct?

Ms. WRIGHT. I am trying to pin the dates down. The discussion about the communications for the State Police happened simultaneously with the murder of one of our troopers in a blind area of the State where we just simply had no communications ability.

Mr. CHERTOFF. Those conversations progressed into 1985, right?

Ms. WRIGHT. They progressed until we got it underway, yes.

Mr. CHERTOFF. Would it help you to put a timeframe on this if I told you it was in April 1985, that the legislation was signed to authorize going forward with the system and funding it through the issue of State bonds? Does that help? Does that ring a bell?

Ms. WRIGHT. I mean, I know we passed legislation to that effect, yes.

Mr. CHERTOFF. I want to make sure we all understand the process. First you had the legislation, the laws that authorized the system in issuing the bonds. Then there was a process of deciding which investment company would be hired to sell the bonds.

The CHAIRMAN. Can I ask for a point of clarification? There came a point in time when the legislature passed legislation authorizing this project and the sale of the bonds. Is that correct?

Mr. CHERTOFF. Yes.

The CHAIRMAN. I'm asking you.

Mr. CHERTOFF. Yes, in April 1985.

The CHAIRMAN. When did that legislation pass in April 1985?

Mr. CHERTOFF. 1985.

The CHAIRMAN. The Governor signed it in April 1985?

Mr. CHERTOFF. Yes.

The CHAIRMAN. Now, we have established the point. It is not fair to have the witness try to recall that, that in April 1985, legislation did pass in the State of Arkansas which authorized this project to go forward.

Mr. CHERTOFF. In May 1985, and I am giving you the date but I want to ask your recollection. The next stage in the process was to award the contract to the investment company that would be selling the bonds, right?

Ms. WRIGHT. It wasn't from my process. You didn't get the first step. You're doing steps. I'll go back and fill in the steps.

Mr. CHERTOFF. Just so we understand chronologically, it begins by passing the law that says we are going to have the communications system and we are going to issue bonds so that we can pay for the communications system. Then the next step is you have to pick the company that's going to sell the bonds. Now whose responsibility in the structure of government in Arkansas was it to make a decision about the selection of the investment company that would sell the bonds?

Ms. WRIGHT. OK, I want to go back and insert some omissions from your statement and then answer your question.

The first step when we committed to having a State Police Communications System is that we did a very exhaustive study with the Governor's office, the State Police, and the Department of Finance and Administration, seeking information about the type of system we would need to cover all the blind areas, and an exhaustive study of the various methods of financing it. After that, we determined what kind of system we would have to have to cover all the blind areas and how much it would cost. And that we would seek legislation.

We had to make a lot of choices and decisions about the form of this legislation since it was going to be funds, and this was our major economic development session where we had a lot of initiatives there. And then once it was signed, it went to the State Police. It was the State Police Commission's responsibility to select the financial investment company that would issue the bonds.

Prior to the awarding of the contract, I put together, because the State Police Commission didn't issue bonds, this is not what they did, it wasn't something that they were accustomed to doing, and

I put together a team to work on advising them about setting up the request for proposals from investment bank firms.

So we got the State Purchasing Director in on it, maybe someone else from the Department of Finance and Administration. I brought in a couple of lawyers who were aware of this to keep the Director and the Commission briefed on procedures. After that, they issued their request for proposals. And after that, proposals were presented to them.

Then the Commission selected a firm. Then there was a process of anything dealing with telecommunications to go back through a legislative, semi-legislative committee, a telecommunications study committee that would then sign off on it.

Mr. CHERTOFF. Briefly then, and you have exhibited a very good memory for this.

Ms. WRIGHT. I remember it well. It was very important to me and I was very involved in it.

Mr. CHERTOFF. That will be helpful. So the process is basically that the legislation is passed, it authorizes the system and the way to fund the system. Then there's a process of sending out requests for bid for the companies that want to sell, and then the State Police Commission was supposed to make the selection of the company that would be picked to sell the bonds, and then it would be approved subsequently through the legislative language. Is that generally speaking accurate?

Ms. WRIGHT. The word "approved" I am not certain is accurate. I am not certain that the legislative committee had an approval authority. I think it was advisory authority, sign off authority.

Mr. CHERTOFF. Was the Governor's office supposed to be involved in the process of deciding which of the investment companies would be picked by the State Police Commission?

Ms. WRIGHT. We not only were not supposed to be, we refused to be, and we were not.

Mr. CHERTOFF. So your position was—and it makes sense—that the Governor's office, while it's perfectly appropriate to be involved in deciding the policy question of the system and how to fund the system, it should be hands off in terms of putting a thumb on the scales for the selection of the particular bond firm, right?

Ms. WRIGHT. Absolutely. I was involved in the procedures that they would follow, but we were not involved in the selection of the firm.

Mr. CHERTOFF. Did you, in fact, have some kind of mechanism to screen out any relationship between the Governor's office and the selection process for the investment firm to kind of keep a wall so that there would be no potential for even any unintentional influence of the selection process by the Governor's office? Was that part of the way you operated in Arkansas in 1985?

Ms. WRIGHT. Well, I mean, we would put the wall down. I don't want kind of, I mean, there was no gag order not to speak to anybody who was involved in the process. There was a refusal to be involved in the process.

Mr. CHERTOFF. Ultimately, of course, you know Lasater & Company got the contract, right?

Ms. WRIGHT. The team that they were on.

Mr. CHERTOFF. They were part of a group. In fact, am I right that in January 1985, before the original legislation was passed, Mr. Lasater and Governor Clinton had contact in general on the issue of Lasater's desire to do more bond work for the State of Arkansas?

Ms. WRIGHT. I believe that I know that from documents that your staff showed to me. And again I'm not positive of the date. I will accept your word for that. But may I point out, Mr. Chertoff, that January was the beginning of our economic development initiatives. One of those initiatives was the creation of a very creative agency called the Arkansas Development Finance Authority. This was of great interest to all investment bank companies and nearly all of them came to talk to us.

Mr. CHERTOFF. In fact, Mr. Clinton had a meeting with Mr. Lasater and others in his group in January at the Legacy Hotel?

Ms. WRIGHT. They had a meeting, as I recall, with the legislatures. And as they were talking, the kinds of things that can augment from the private sector and augment the kind of economic development initiatives that were being talked about. The Governor went, for a period of time, to that meeting that they were hosting for legislators.

Mr. CHERTOFF. Did that meeting include a discussion of the Police Communications System?

Ms. WRIGHT. I don't recall that. Is that on any of our information? I think it was far more related to the development finance authority vehicle.

Mr. CHERTOFF. I can show you DKS 27487 which is the presentation to the State of Arkansas regarding financing structures and investment banking services. It has, in its table of contents, and in Section 5, a discussion of Police Communication System financing. It was presented by E.F. Hutton and Lasater & Company. See if that refreshes your memory that the Police Communications System was on the agenda.

Mr. COHEN. What page again?

Mr. CHERTOFF. It's 27487, the particular section is 27531.

Mr. COHEN. Thank you.

The CHAIRMAN. The first page after the index, I believe. Do you have it there?

Mr. CHERTOFF. Does that refresh your memory?

The CHAIRMAN. Let's let her take a look at this first.

Ms. WRIGHT. Mr. Chertoff, there's no reason that this document by these companies would refresh my memory. This was not a State operation, even though they loosely used the State seal, a thing which irritates me and is a pet peeve.

It was well known that we were looking at methods of financing a State Police Communications System. These companies were not the only ones who proposed financing them by bonds. In fact, Mr. Chertoff, it seems to me that at one point we may have considered that legislation because it was talking about bond financing as part of the legislation, but then later split them apart.

Mr. CHERTOFF. My time is up so this is a good time to pause.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. As I look at the table of contents—do you have this in front of you, Ms. Wright?

Ms. WRIGHT. Yes.

Senator SARBANES. As I look at the table of contents, there were, in fact, nine sections and three appendices. So a lot of different items were covered other than this police communication financing. Is that correct?

Ms. WRIGHT. That's correct.

Senator SARBANES. At least that's what I make. I mean, all we have here, and what's been put before you is a table of contents, and apparently just the few pages that pertain to Section 5 of the police communication financing. But all the other pages, I'm trying to see if we have them—the full documents are not present. So this was, I take it, a small part of a much larger document. At least that's the inference I draw. Does that sound reasonable?

Ms. WRIGHT. It does, sir, and it is really indicative about how much attention we had succeeded in getting focused on new financing structures for the economic future of the State. And many of the private investment bankers had stuff like this going on where they were trying to make suggestions.

Senator SARBANES. But apparently their presentation covered housing financing, correctional facilities financing, patrol car financing, health care financing, State assistance for water and sewer financing, along with I guess a description of the Hutton group and the marketing and distribution strength of the Hutton group and so forth and so on.

I yield to Mr. Ben-Veniste, ah, Mr. Cole.

Mr. COLE. Good afternoon, Ms. Wright.

You had begun to describe the process by which these bonds ultimately came to be issued, and you described the legislation that was enacted, as I understand it, in order to authorize the issuance of bonds. Then, I believe, Mr. Chertoff asked you some other questions. Could you pick through there and walk through the process for the benefit of the Committee as to how these bonds ultimately came to be issued, and how the underwriters were selected?

Ms. WRIGHT. The State Police Commission went through a process of preparing a request for proposals. They issued that, I forget exactly how all they did it, but they narrowed it down. They had presentations and proposals and the State Police Commission made the selection of the investment banking group.

Mr. COLE. So there was a general solicitation of requests for proposals, I think they are called RFP's, generally in the business, and any securities firm that wanted to participate was free to submit a proposal to the State Police Commission?

Ms. WRIGHT. Yes. Quite a few did.

Mr. COLE. Then the selection process was one that was undertaken by the State Police Commission, separate and apart from the Governor's office?

Ms. WRIGHT. Totally.

Mr. COLE. Did the Governor's office play any role in that process?

Ms. WRIGHT. No, sir.

Mr. COLE. Now, in terms of the underwriters that were actually selected for this particular offering, do you recall the names of the firms that were a part of the team that included Lasater & Company?

Ms. WRIGHT. Hutton, Lasater and Raney, I remember, because of all the contemporaneous discussion about it, the current discussion about it.

Mr. COLE. And E.F. Hutton was a national securities firm at that time that would have been the lead underwriter on this offering?

Ms. WRIGHT. That's correct. E.F. Hutton was, as the lead underwriter, the name that I knew the proposal submission from, rather than Lasater.

Mr. COLE. In addition to Lasater & Company, there was another Little Rock securities firm that was a part of this team. Correct?

Ms. WRIGHT. Yes, the Raney firm.

Mr. COLE. T.J. Raney & Sons. So Lasater was just one of three firms that was responsible for distributing these securities to the State?

Ms. WRIGHT. That's correct.

Mr. COLE. In fact, Lasater & Company was not even the lead firm. The national Hutton firm was the lead underwriter?

Ms. WRIGHT. That's correct.

Mr. COLE. Do you know a gentleman named Johnny Mitchum?

Ms. WRIGHT. Yes, sir. He was a member of the State Police Commission.

Mr. COLE. And as a member of the State Police Commission, did he participate in the selection of the underwriters for this bond offering?

Ms. WRIGHT. He should have.

Mr. COLE. Mr. Mitchum has given a deposition to the Committee and if I could refer to page 133 of his deposition on February 9, 1996, I want to read something and see if your recollection differs from what Mr. Mitchum described.

Question: You testified earlier that representatives of the Governor's office attended Commission meetings and also meetings of the subcommittee that looked into police radio financing. I believe you also testified "they were just there, primarily just listened." Is that an accurate statement of your recollection of your participation?

Answer: Yes, I never recalled anyone from the Governor's office taking an active role in that process.

Question: They didn't try to direct the Commission to select a particular underwriter?

Answer: No.

Question: Or not to select a particular underwriter?

Answer: Never.

Question: Or to structure the deal in any way?

Answer: No.

Question: They just observed?

Answer: Correct.

Now from your knowledge, did participants from the Governor's office observe the selection process?

Ms. WRIGHT. Yes, but not per se, Mr. Cole. The Criminal Justice Liaison from the Governor's office attended all State Police Commission meetings.

Mr. COLE. I take it that you or no one on your staff ever tried to influence the members of this Commission to select a particular underwriter. Is that correct?

Ms. WRIGHT. Absolutely not.

Mr. COLE. In fact, Mr. Mitchum testified a couple of pages earlier, on page 131, he is asked:

Question: Turning to the period when you were considering various underwriters for the issuance of the State Police bonds, I would just like the record to be clear. Other than the underwriters themselves, did anyone try to influence you to select a particular underwriter?

Answer: No.

Question: Did anyone try to influence you not to select a particular underwriter?

Answer: No.

Question: What would you have done if someone had made such an effort?

Answer: I was in the CPA business for 13 years, and ethics was a cornerstone of my existence. I would have to weigh the ethical considerations of such an approach. If I deemed it inappropriate, then I would have responded accordingly.

So I think that we have a clear record on that.

Did there come a time after the offering process proceeded to the point that the Raney/Hutton/Lasater group had been selected that there were complaints from other firms about the selection of the Raney/Hutton/Lasater group?

Ms. WRIGHT. Yes, there did. But if I could back up and add to what you just relayed from Mr. Mitchum's testimony, if we had been trying to influence the votes, it probably, the only votes in opposition from the Commission to that team were our appointees. That the majority of the votes for that team were the Republican predecessor's appointees. So you know, if we were trying to deliver votes, I think we would have done a better job of our own folks. The notion of complaints, oh, there was a lot of paranoia about this all the way through the process.

Investment bank companies are fairly cut throat in the way they deal with each other, talk about each other, spread rumors about each other, send up red flags about each other, tell on each other. And I was constantly being fed scuttlebutt or things that weren't fair, et cetera. So there were complaints and I was just staying grounded with if the Commission's staying with its process, here's an allegation I have been given. Make sure it's within the process. So that, you know, I took it all very personally that this was going to be a clean, clean, above reproach award.

Mr. COLE. And so you had personal involvement throughout this process?

Ms. WRIGHT. In deflecting away from our office any attempt to get us involved and in preserving and protecting the process that the Commission had established.

There probably were things that, either based on hearsay or information or even my own concerns, I asked the Commission through the Director or their attorneys or the State purchasing directors to consider.

I know that I was concerned about what the public relations impact of an E.F. Hutton association with the State Police would be because E.F. Hutton had recently had some legal problems as a firm. I didn't tell them what the answer to that was. I asked that to be considered and looked at. But certainly after the Commission made its selection of the Raney/Hutton/Lasater team, then there were complaints, and there was an attempt by some of the losing competitors to change the process, revoke the legislation, et cetera.

Mr. COLE. So in essence then, was the selection of the Raney/Hutton/Lasater group reviewed a second time by a board of the State Legislature?

Ms. WRIGHT. Reviewed is I think the proper word, not approved. Initially it would go to the Telecommunications Study Commission.

It did go there. Now the Governor's office had a member on that committee under Arkansas statute. The chairman of that commission ultimately I think his public statement was that he really didn't understand all the bond stuff, that it was too confusing to him, and so he wanted the interim decision body for the legislature to hear it. So it went to the legislative council then.

Mr. COLE. The council reviewed it and didn't take any action?

Ms. WRIGHT. And gave its favorable advice.

Mr. COLE. We started with this because Mr. Chertoff asked you some questions about the particular financing of this State Police radio network. It might be helpful to back up for a minute and talk generally in the time that I have remaining about the selection of underwriters for State bond business. Was there a policy in the Clinton administration, beginning with his reelection in 1982, to open up the bidding process to more firms in the State?

Ms. WRIGHT. There most certainly was. During the years, during the 2 years that Governor White had been the Governor, the Housing Development Authority's bonds had gone into a monopolistic shape to the same people.

We got lots of complaints from other investment bankers that Governor Clinton made the commitment that if he were reelected, there would be an open process and it would be highly competitive and there would be no more monopolistic bond awards within the State. I think we went in a short period of time from maybe 3 or 4 firms to 40 some odd firms receiving State bond business.

Mr. COLE. When you refer to a monopolistic situation, if I understand you correctly, you mean that 1 or 2 or 3 firms received the lion's share?

Ms. WRIGHT. All of it.

Mr. COLE. All of the bond business.

Ms. WRIGHT. A national underwriter and a local firm got nearly all of it.

Mr. COLE. The same firms kept getting the business over and over again?

Ms. WRIGHT. That's correct.

Mr. COLE. Did that change during the Clinton administration?

Ms. WRIGHT. Totally.

Mr. COLE. Was Lasater & Company one of the local firms that, in the Clinton administration, began to get bond business from the State?

Ms. WRIGHT. Yes. It was one of many, yes.

Mr. COLE. Do you know whether Lasater & Company ever contacted the Governor's office to indicate that they would like to have more bond business?

Ms. WRIGHT. Almost all of the firms contacted us complaining that they weren't getting enough bond business.

Mr. COLE. When your office received those kinds of complaints, what would you do?

Ms. WRIGHT. Of course these had to do with the Housing Development Authority first, and then the Arkansas Development Finance Authority, its successor agency. And I would ask the person on the Governor's staff in charge of economic development and working liaison with those agencies to make certain that they were

being treated fairly, that they were being included, and that we weren't sliding them. There wasn't anything else to do.

Mr. COLE. So you would refer to a staff member and instruct them to assure that the process that had been set up was being followed appropriately?

Ms. WRIGHT. That the policy was, yes.

Mr. COLE. Do you know whether Lasater & Company was ever selected or named as the lead underwriter on any of the offerings by the State of Arkansas?

Ms. WRIGHT. I don't recall that they were.

Mr. COLE. In fact, are you familiar in securities offerings, there are tiers of brokers that get the business and the lead underwriter will be listed at the top, and then there is a second tier and often a third tier. Do you know which tier Lasater & Company usually was found in terms of the share of State business they received?

Ms. WRIGHT. I think I remember them telling me that they were usually in the bottom.

Mr. COLE. One last question, Mr. Chairman. They were usually on the bottom and they were trying to move up to the second tier?

Ms. WRIGHT. I do not know what they wanted. It was never enough but believe me, this was not just Lasater. They are all alike. Lasater didn't get any business because of money they contributed. All investment bankers contributed, none of them got money because of contributions and we didn't direct bond business.

Now the State Police Commission was a very different situation because the State Police Commission was not in the business of issuing bonds. See this was a unique event. Getting this communications system up and running and saving troopers' lives was a high priority concern to the Governor's office.

Mr. COLE. Thank you.

Mr. CHERTOFF. Ms. Wright, after this January meeting Lasater had a second meeting with the Governor. In February, right?

Ms. WRIGHT. I don't have—if you tell me he did.

Mr. CHERTOFF. Let me show you this. He wrote a letter to the Governor shortly thereafter on February 15, 1985, which we have, together with the notations you made on it.

The CHAIRMAN. Wait. Counsel is going to give it to her. She has it in front of her. Go ahead.

Mr. CHERTOFF. What you should have before you are 3 pages, a 2-page letter and a copy of the front of the envelope in which the letter—

Ms. WRIGHT. I don't have the envelope.

Mr. CHERTOFF. It's DKSJ 27572.

Ms. WRIGHT. We have 573.

The CHAIRMAN. They will bring a copy of the envelope down. Do you have it? OK.

Mr. CHERTOFF. Do you recognize this letter?

Ms. WRIGHT. I recognize this letter because it has been shown to me recently.

Mr. CHERTOFF. The letter begins with Mr. Lasater saying, "Dear Governor, thank you very much for the opportunity to sit down and visit with you regarding the many issues facing Arkansas." Then it goes on to list a number of things that were discussed.

Mr. Lasater suggests "that Lasater & Company be advised of all financing proposals effecting the State" contact person in Lasater & Company—that name is given to the Governor. Then there's discussion of an appointment to the Arkansas Housing Board, and a confirmation of our understanding regarding the appointment. There's a suggestion that a representative of the staff attend a particular study meeting. Mr. Lasater goes on to say that "we would recommend competitive proposals be required on the up-coming financing to permit Hutton to submit a proposal." And he goes, "It is important for us to know that because we have made commitments to Hutton and unless competitive proposals are accepted, it would leave us, Lasater & Company, in an untenable position."

On page 2, Mr. Lasater goes on to offer the Governor the services of "Dan Moody, who is very familiar with State government and who serves on the Constitutional Convention, is a lobbyist and he is available on strategy." Mr. Lasater then says, "In addition, we would be more comfortable if you would take the opportunity or ask someone on your staff to take the opportunity to appraise me or my staff of any actions by you or your staff prior to any public announcements, so that we will not be surprised or in some instances embarrassed because of the announcement."

And he goes on to say, "Finally, I believe it would serve us both well to have regular monthly meetings between the two of us to discuss the effects of the economy on Arkansas." Now, you saw this letter when it came in in 1985?

The CHAIRMAN. Because I think it's important, I want you to finish the rest.

Mr. CHERTOFF. I will read the last three paragraphs:

In addition, we would be more comfortable if you would take the opportunity or ask someone on your staff to take the opportunity to appraise me or my staff of any actions by your or your staff prior to any public announcements, so that we will not be surprised or in some instances embarrassed because of the announcement.

Finally, I believe it would serve us both well to have regular monthly meetings between the two of us to discuss the effects of the economy on Arkansas. Bill, I do not ask for this to have undue influence or to try to apply undue pressure to you or your administration, but because of my background in business, I believe that I can make a positive contribution to you in your efforts to promote a better climate in the State of Arkansas.

Again, thank you for the opportunity to sit down and discuss with you these points and I hope you will act favorably on my suggestion for a regular meeting.

Now, you wrote a reaction to this in which I think you said it was outrageous, didn't you?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. And it is outrageous, isn't it?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. What did Mr. Clinton write? What was his reaction, in his own handwriting on the envelope?

Ms. WRIGHT. He said, "not the time to go this far," which is, if you know Mr. Clinton, his very gentle way of saying no. He is a far more diplomatic person than I.

Mr. CHERTOFF. This note, "not the time to go this far." This wasn't a response he wrote to Mr. Lasater. This was his note to you right? When he scribbled the note, "not the time to go this far," he wasn't writing it to Mr. Lasater with whom he had to be diplomatic. He was writing it to you.

Ms. WRIGHT. I don't know for certain the sequence of this but my guess is, I'm guessing different from what you did, and it's only a guess, Mr. Chertoff, is that the Governor read this letter first. It then came to us. Maurice made his comment, I made my comment, and I sent it back into him to see our two comments. He then said we must discuss.

Mr. CHERTOFF. His reaction was "not the time to go this far." And he said, "we must discuss." So what was his discussion about this outrageous letter?

Ms. WRIGHT. I don't remember, Mr. Chertoff. What I think of when I wrote these things, like this is outrageous, this is stupid, he got scared so he said, we must discuss to assure that my tone was properly respectful of the citizen.

Mr. CHERTOFF. Did Mr. Clinton tell you this was an outrageous letter and that Mr. Lasater was kind of a loose cannon who should be watched?

Ms. WRIGHT. I think we were all aware that this man had a very heady trip going because he'd had a visit with the Governor. And the Governor certainly understood that this was not appropriate. The Governor was probably more concerned that I not be rude to Mr. Lasater and to assure himself that my tone of rejection was proper, and that we work it through the agency, as we did. We notified them and set up a procedure.

Mr. CHERTOFF. During this period of time, was Sam Bratton the staffer in the Office of the Governor who was actually working on writing the legislation that would start this Police Commission bond issue going?

Ms. WRIGHT. We didn't write much legislation out of our office. We didn't have enough staff to do that.

Mr. CHERTOFF. He was supervising the person who was dealing with the legislation?

Ms. WRIGHT. He was responsible for making certain that our legislative package was prepared and in good form and ready.

Mr. CHERTOFF. Therefore in terms of your legislative package on this police financing bill, he was the person who had the responsibility for being the contact point at the Governor's office, right?

Ms. WRIGHT. Very likely, in terms of reviewing whatever work we got done on it.

Mr. CHERTOFF. And who actually did the work of writing the legislation?

Ms. WRIGHT. As I said earlier, Mr. Chertoff, I think that we initially envisioned the State Police financing being a part of the legislation establishing ADFA. We then broke it off. As I recall, the same firm that we used to write the ADFA legislation wrote the State Police legislation.

Mr. CHERTOFF. That was Mitchell Williams?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. Wasn't that Dan Lasater's firm?

Ms. WRIGHT. I don't have any idea. They were a firm that we used to write legislation regarding bonding a lot.

Mr. CHERTOFF. Do you know whether Mr. Lasater retained them to work on his behalf in terms of this bill?

Ms. WRIGHT. I have not a clue.

Mr. CHERTOFF. Do you remember them saying to you, we had better not be involved in this because we actually represent one of the bidders?

Ms. WRIGHT. They said that to me?

Mr. CHERTOFF. I'm asking you did they say that to you?

Ms. WRIGHT. There were no bids. We were establishing legislation. The Mitchell firm wrote our ADFA legislation, Mr. Chertoff. This was a spinoff piece of separate legislation. The Mitchell firm obviously was going to continue doing this. I know nothing about the Mitchell firm's relationship with Mr. Lasater, nothing. I'm not in the business of keeping track of who has what law firm.

Mr. CHERTOFF. So you don't see any problem—

The CHAIRMAN. Wait a minute. Why don't you ask—if this particular law firm drew up not only the overall legislation, but this particular legislation dealing with the State Police that authorized going forward with this bonding. The question was also asked if Ms. Wright was aware if Mr. Lasater's firm was represented. Is Ms. Wright aware of that? I think that's the way you ought to put the question. Let's rephrase that.

Mr. CHERTOFF. The Mitchell Williams firm wrote the legislation for the State on this State Police radio financing bill, correct?

Ms. WRIGHT. I think that is correct.

Mr. CHERTOFF. Whether or not, now did you know that they had been hired to work on this particular matter by Dan Lasater?

Ms. WRIGHT. I did not.

Mr. CHERTOFF. That I take it was not disclosed to you?

Ms. WRIGHT. I don't even know that now, Mr. Chertoff.

Mr. CHERTOFF. We'll have the witnesses on that later.

Let me ask you this. Had you known about it, would you have seen a big problem with having the lawyers for one of the bidders writing the legislation?

Ms. WRIGHT. It depends on what the nature of the representation the firm was doing for Mr. Lasater. I don't know.

Mr. CHERTOFF. They were working on this bill for Mr. Lasater. Do you see a problem with that?

The CHAIRMAN. Let's understand so that the record is clear. You were not aware of that, and you're saying you don't know that to be the case even today? You were not aware that this firm was working for Mr. Lasater while it may have been doing work for the State agency. You were not aware of that. You knew they were doing work.

Ms. WRIGHT. No, sir, I'm not aware of that. But frequently firms hire law firms to draft up legislation they want to suggest to various people who introduce it or consider it, and I don't think there's anything wrong with that. I think you get a lot of helpful stuff that way. So I guess, you know, I'm foggy on the problem, I'm foggy on the time, I'm foggy on the relationship.

The CHAIRMAN. There might be a very real problem in the event that they were working on the proposal for Mr. Lasater to help the State, suggesting how the State should draft legislation, and then were drafting legislation for the State. But again we are establishing that you were not aware of this at that time. It's not a trick. So that can't be your problem. It's not your fault if you weren't aware of it.

Ms. WRIGHT. All I know is that the work that the Mitchell firm did at our request in working with us was on our legislation that was part of the Governor's package on the Governor's Initiatives, and it had nothing to do with whatever else they were doing for Dan Lasater. That's all I know.

The CHAIRMAN. So you were not aware that they may have been working for Mr. Lasater, in conjunction with this, is that correct?

Ms. WRIGHT. I am not. I do know that they produced our document.

Mr. CHERTOFF. Let me make sure we are clear on this. It is your testimony that the Governor's office selected the Mitchell firm to work on this piece of legislation?

Ms. WRIGHT. That is my recollection because, in my head, which is very faulty at times, Mr. Chertoff, the Mitchell firm was helping us design the legislation for the Economic Development Agency, and that we first envisioned this as a part of that.

Mr. CHERTOFF. This is a very simple, straightforward answer. With respect to this bill, your understanding is that it was the Governor's office that selected the lawyers, yes?

Ms. WRIGHT. Mr. Chertoff, I just answered that question and why I seem to recall that that was the case.

Mr. CHERTOFF. Let me read from the testimony of Mr. Michael Drake, who was the Senior Vice President at Lasater & Company at the time, at page 88.

The CHAIRMAN. Can we get a copy of this to counsel?

Mr. CHERTOFF. This is Mr. Drake's deposition.

The CHAIRMAN. On page 88 of Mr. Drake's testimony. I think we want to get a copy to counsel and to Ms. Wright. We are going to try and make a couple of copies of this.

How are you doing, Ms. Wright?

Ms. WRIGHT. I'm tired and I'm bored, but there isn't anything you can do about that.

The CHAIRMAN. We are going to try and get through this. We can take a 5-minute break if you want.

Ms. WRIGHT. I'm OK right now.

The CHAIRMAN. All right, we are going to get this down to you. This is the testimony of who, Mr. Chertoff?

Mr. CHERTOFF. This is the testimony of Michael Drake.

The CHAIRMAN. Who is Michael Drake?

Mr. CHERTOFF. At the time, he was the Senior Vice President of Lasater & Company.

The CHAIRMAN. What line?

Mr. CHERTOFF. We'll start at page 87.

The CHAIRMAN. Let's make sure we are all there. Counsel, are we all there? OK.

Mr. CHERTOFF. Line 13, he is referring to Dan Lasater:

Answer: So, I took it to Dan, and said Dan, this is what we want to do. He said proceed. Just let me know how I can help you.

Question: How did you present it to them? Did you discuss with them how they mentioned that they knew that Lasater and Dabbs Sullivan had helped the Governor?

Answer: Yes.

Question: Could you explain to me, in your words, how you relayed that to him and how you characterized it? What did Mr. Synder—

Answer: I said as well as I can remember—it was a long time ago—a T.J. Raney has come to us, because of your relationship with Bill [that's Bill Clinton], to try

to get this legislation passed that will enable us to take a proposal to the State Police Commissioner to sell these securities and help them acquire this new communications system, this hotshot thing Motorola has come up with.

He said, fine, what are the steps? I said the steps are, (A) we had to find a law firm to draft the legislation; (B) we had to work with the staff, with the Governor's office to explain why we are doing this, what we hope to accomplish; and (C) we have to go to the State Police and explain to them what we are trying to do. He said no problem, go do it.

We chose the Mitchell law firm in Little Rock to draft the legislation for us. I don't remember now who we got to introduce it. It might have been that the Governor introduced it in his package. I don't remember.

We met with—over a period of several months, we met with Colonel Goodwin of the State Police, and that subordinate whose name I don't remember who was a major at the time, and who was given direct responsibility for the project at the staff level.

Then it goes on to discuss further developments.

Now the relevant part for the question I'm asking you is, Mr. Drake's testimony under oath that he and his group chose the Mitchell law firm to draft the legislation for them. Does that change your recollection or do you believe that perhaps the Mitchell firm was working for both the Governor's staff and one of the bidders?

Ms. WRIGHT. I don't have a recollection of that. I have a recollection of the Mitchell firm working the legislation for us. It was our package, it was our initiative. I don't care what Michael Drake thinks about them picking it up, and I don't know, I didn't know and I don't know that there may have been a convergence. I still don't know enough facts, Mr. Chertoff.

Mr. CHERTOFF. There may have been a convergence of interests, you were about to say?

Ms. WRIGHT. Of involvements.

Mr. CHERTOFF. A convergence of involvements.

Ms. WRIGHT. Yes. I don't know.

Mr. CHERTOFF. Do you know a Mike Gaines?

Ms. WRIGHT. I certainly do.

Mr. CHERTOFF. Who is Mike Gaines?

Ms. WRIGHT. He was the Public Safety Liaison of the Governor's staff for the time.

Mr. CHERTOFF. So he was a member of the Governor's staff?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. As was established on April 4th, the legislation which had been drafted by the Mitchell firm—

The CHAIRMAN. What year was that?

Mr. CHERTOFF. 1985.

The CHAIRMAN. Let me just stop to make a point of inquiry. The little red light has gone on. Are you prepared to yield now, or do you want us to keep going, whichever.

Senator Sarbanes.

Senator SARBANES. Ms. Wright, I notice in this deposition, he says Win Rockefeller was a member of the State Police Commission?

Ms. WRIGHT. That's correct.

Senator SARBANES. Is that the former Governor of Arkansas?

Ms. WRIGHT. The son of the former Governor.

Senator SARBANES. The Republican Governor, this is his son?

Ms. WRIGHT. Yes, sir.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. This again is fascinating for some people, I'm sure. The history of legislative drafting in the State of Arkansas and how people went about doing this back 12 years ago. We got all the way up to 1984 now.

My question is if there's to be some level of pertinence or relevance to this, it would be if the legislation that was presented for consideration to the legislature, if, in fact, it was drafted by a law firm retained by one of the companies that was going to bid on it, whether that legislation was drafted in a way that favored Lasater, Hutton, or any other member of their group.

If that were the case, so that it was tailored in a way that nobody else could bid on it, or it would provide a great advantage to Lasater or Hutton in their bidding process, then I think, even with the thing happening 12 years ago, maybe that would be interesting to somebody. Was there anything in the way this legislation got drafted, so far as you knew, that excluded others and favored Lasater & Company?

Ms. WRIGHT. No, sir. I don't think that the legislation specified the procedures by which proposals would be taken or the bonds would be awarded. It just authorized the awarding of bonds. And I am, with all deference to both you, Mr. Ben-Veniste, and Mr. Chertoff, there is nothing I am saying to you today that I can swear by. It is distant memory. Distant memory. And I am doing my best to share with you that which I can dredge forth.

But the opportunity to skewer the thing in favor of one firm or another would have come after the legislation passed and in developing the procedures. And I personally know that did not happen.

Mr. BEN-VENISTE. I think that is the sole relevant question to ask about this historical event for the bidding of police radios in Arkansas in 1984, and I thank you for providing it.

Mr. Cole.

Mr. COLE. Just a couple of questions more, Ms. Wright, on Mr. Lasater's contacts with Governor Clinton. Did Mr. Lasater meet frequently with Governor Clinton?

Ms. WRIGHT. No, sir.

Mr. COLE. Mr. Chertoff made reference to a fundraiser that Mr. Lasater held for Governor Clinton in 1984. Did he hold any other fundraisers?

Ms. WRIGHT. I only recall one.

Mr. COLE. Were you ever present at a meeting between Governor Clinton and Mr. Lasater in the Governor's office?

Ms. WRIGHT. I don't remember.

Mr. COLE. Perhaps this would refresh your recollection. Mr. Lasater testified that he recalled a meeting with the Governor and his testimony is:

Mr. LASATER. What I recall is that I was upset because we were the second largest capitalized broker-dealer in the city and we were not being treated fairly in my opinion in the amount of bond business that we received. We were down on the bottom tier instead of on a tier with Stevens and some of the other larger firms.

Mr. GIUFFRA. Why do you think you were on the bottom tier?

Mr. LASATER. I don't know, maybe because we were new. You know, I don't know, but I wasn't happy about that. I felt we were entitled to be a larger participant.

Mr. GIUFFRA. What do you recall Governor Clinton saying in response to your request?

Mr. LASATER. All that I recall is he was noncommittal and would have to, you know, present our case to his staff, whoever was in charge of that.

Mr. GIUFFRA. And approximately how long was this meeting?

Mr. LASATER. Ten minutes.

Mr. GIUFFRA. Did there come a time when you improved your position in terms of bond underwriting?

Mr. LASATER. No.

Mr. GIUFFRA. So you remained at the bottom tier?

Mr. LASATER. Right.

Do you recall, Ms. Wright, anything about that meeting?

Ms. WRIGHT. Was I there?

Mr. COLE. Mr. Lasater did not recall your being there one way or another.

Ms. WRIGHT. I don't recall being there.

Mr. COLE. But I take it that Mr. Lasater's recollection, as far as whether or not his firm ever improved its position in terms of the share of State underwriting business that it received as a result of meetings with the Governor is consistent with your recollection that that didn't happen?

Ms. WRIGHT. I know there was no relationship between any business that he got and anything he asked of us.

Mr. COLE. To your knowledge, the Governor's office never intervened or took any action, either Governor Clinton personally or one of his staff, to try to influence the selection process to benefit the Lasater & Company?

Ms. WRIGHT. Not to benefit a specific company. We would try to make certain that there was an open process, that there was a lot of communication outward to the investment bankers. The investment bankers could find all kinds of things to complain about.

Mr. COLE. And your purpose was to expand the number of firms that received a share of the State's bond underwriting business?

Ms. WRIGHT. The purpose was to have competitive bids that were genuinely and truly competitive so that you could get not only good deals for the State, but you could also spread the business around and you could get some creative thinking going. All of that was accomplished.

Mr. COLE. I take it there were some securities firms in Little Rock or in Arkansas at that time that were not political supporters of Governor Clinton?

Ms. WRIGHT. Yes, sir.

Mr. COLE. Did some of those firms receive State bond contracts during the Clinton administration?

Ms. WRIGHT. Absolutely. The awarding of State bond contracts had nothing to do with being a supporter of Governor Clinton's. Almost all were supporters or at least contributors. I'm rather cynical about the kinds of ways that investment bank companies become supporters.

But opponents, I mean there were a couple of firms who were outright opponents. Nothing ever interfered with their entering competitive bids and being awarded contracts.

Mr. COLE. Actually that was what I was getting at because in my review of the records, and I won't take the Committee's time to put them on the screen, the documents that we have received showed that the firms who were receiving the contracts during the prior Frank White Republican administration continued to receive bond underwriting contracts during the Clinton administration.

The difference was that instead of being two or three firms, it was open to a half dozen or more firms.

Ms. WRIGHT. That is correct. And those firms obviously kept hoping that the day would go back when they didn't have to do all of this competition and sharing, and they fought our economic development package. They fought our legislation.

And what we did was right and it was wonderful for the State. It opened it up and even though they fought that legislation, they still benefited from it when it went into effect.

Mr. COLE. Thank you.

Mr. BEN-VENISTE. I take it from your testimony, Ms. Wright, that it is your view that by reason of the increase in competition rather than this monopolistic or oligarchic concentration of the bond business in one or two or three different firms, as had been the case for 2 years prior to the administration in which you served, the State benefited, in your view, from the fact that there was now competition which would mean that the State would get a better deal in connection with the sums charged by these investment bankers?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Is there anything in terms of the complaints that were raised, and I take it in a competitive environment, you know, we have this in Washington all the time, if one company gets the award of the contract, the competitor cries that the process was unfair and there are six or seven or eight reasons why the whole thing should go back to square one. Then when that company gets the next contract, their competitor cries foul, and the same thing happens again.

I trust on a somewhat smaller scale, the experience in Arkansas was the same. But in terms of the criticisms that were leveled, was there a criticism that the State was paying more than it should have as a result of this legislation or the increased competitiveness in the marketplace?

Ms. WRIGHT. Not at all.

Mr. BEN-VENISTE. We will cede back our time and hope we can finish up here.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Ms. Wright, I just want to be clear, because when we left the last portion of our back and forth, I believe that your indication to me was that whatever arrangement the Mitchell firm, and by the way, that was Jim Guy Tucker's firm, right?

Ms. WRIGHT. He was in that firm, yes.

Mr. CHERTOFF. He was a partner at the firm, right?

Ms. WRIGHT. I don't know the law firms.

Mr. CHERTOFF. I think we left it with saying that whatever Mr. Lasater's arrangement with the Mitchell firm, in terms of Lasater having hired Mitchell to work on this legislation, as far as you were concerned, the Mitchell firm was working for the Governor's office or for the State on this legislation. Is that your recollection?

Ms. WRIGHT. I know the Mitchell firm did legislation as a volunteer assistant to us on pieces of our Economic Development Package. It is my vague recollection that we spun the State Police thing off of that, and that's why the Mitchell firm was involved in it.

Mr. CHERTOFF. Isn't it true, that at the time of the contract itself, you were well aware of the fact that the legislation was actually, for all intents and purposes, prepared by the Raney/Hutton/Lasater group, Mr. Lasater's group of bidders? You were aware at the time, were you not, that they were drafters of the legislation?

Ms. WRIGHT. I don't remember that, sir.

Mr. CHERTOFF. I mentioned Mike Gaines before. I want you to look at DKSJ 18184. This is a memo to you from Mike Gaines on 5/15/85 which I'm calling out now.

The CHAIRMAN. Wait until she gets this.

Mr. CHERTOFF. This is that Mike Gaines I asked you about before we broke who was in the Governor's office dealing with public safety issues, right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. This memo was prepared 5 days after. I'll just represent to you it was prepared 5 days after the formal award of the contract on May 10th by the Arkansas State Police Commission. It refers to one of those very complaints by another bidder, that disappointed bidder that you were just testifying about.

It lists the complaints. In particular, I want to draw your attention to the paragraph that begins after the paragraph which has an Arabic numeral 2. It says, "Capitol"—which is the disappointed bidder—"points out that the legislation (written by H,L,R) requires monthly payments."

You will agree with me—and take as much time as you need looking at the memo—that H,L,R in the context of this memo refers to Hutton/Lasater/Raney. I would suggest to you, after you have satisfied yourself of the memo, that this memo makes it very clear that at the time, Mr. Gaines understood and you understood that it was the bidding team of Hutton/Lasater/Raney that—

Ms. WRIGHT. Excuse me, Mr. Chertoff. I'm not certain you have the same document I'm reading. Can you just hold yours up?

Mr. CHERTOFF. It's May 15, 1985. To: Betsey Wright; From: Mike Gaines, Subject: ASP Communication System, DKSJ 18184.

Mr. COHEN. Mr. Chertoff, I think the problem is that even if you look on your screen, I think the portion you just read—and we will accept your representation of what it says—is pretty difficult to read. That's why we couldn't pick it out.

Mr. CHERTOFF. Take my copy.

Mr. COHEN. I don't need your copy. I just read it. We're just fine.

Ms. WRIGHT. I am now at the point I understood where you were reading.

The CHAIRMAN. Let's do it again so that we are all together. Where are we starting?

Mr. CHERTOFF. We are starting with the fifth paragraph. "Capitol points out that the legislation (written by H,L,R) requires monthly payments." And if you look earlier in the memo, you see that H,L,R refers to Hutton/Lasater/Raney, which was the bidding group that was Dan Lasater's bidding group. Now does this help you to conclude that, in truth and in fact, you knew in May 1985, that the legislation had been written, for all intents and purposes, by the Lasater bidding group?

Ms. WRIGHT. No, sir, it doesn't. It means that I would assume Mr. Gaines had his information wrong or had been told it wrong, because he wasn't involved in that part of it.

Mr. CHERTOFF. Did you say to Mr. Gaines when you saw this—in substance, I don't mean in exact words—"Mike, you're not telling me that the bidders wrote the legislation?" Did you ask him that?

Ms. WRIGHT. No, sir, I didn't need to, because I knew it was our legislation.

Mr. CHERTOFF. So notwithstanding the contemporaneous memo written right at the time by Michael Gaines that Hutton, Lasater and Raney wrote the legislation; notwithstanding Mr. Drake's sworn testimony in a deposition that Hutton/Lasater/Raney paid the Mitchell firm to do the technical work; and notwithstanding your own admission that the Mitchell firm actually wrote the legislation, you're going to continue to tell us that, in fact, the legislation was not written by Lasater and his lawyers, but it was written totally independently?

Ms. WRIGHT. It is my recollection that the Mitchell firm wrote this legislation for us. I am unaware of a relationship with Lasater. I am not positive of anything. It did not—the telling point of this memo was not something flying through the air about some unfair practices, but to make certain that the procedures had monitored these kinds of issues, and that these allegations were either baseless or could be explained and dealt with.

Mr. CHERTOFF. It would seem to me from the memo that the disappointed bidder was, in fact, complaining that the winning bidder had written the legislation. Isn't that exactly one of those process issues that you just told us you wanted to be sure were absolutely perfectly carried out?

Ms. WRIGHT. There are a couple of far more substantive complaints conveyed to me here in this memo.

Mr. CHERTOFF. Now in between the time the legislation that enabled this project was passed on April 4th, and the time that the final decision was made by the Police Commission on May 10, 1985, during that intervening period of about 5 or 6 weeks is when the request for proposal went out to investment groups that would want to bid to get the work, right?

Ms. WRIGHT. I don't recall the dates.

Mr. CHERTOFF. Accept my dates. That's the stage of the process. Now, I want to show you a memo dated May 1, 1985, right in the middle of this period where the proposals are coming in, written from the same Mike Gaines to Governor Clinton and Betsey Wright. It's DKS 27162. It's May 1, 1985.

Mr. COHEN. I'm afraid we don't have it on this side of the room.

Mr. CHERTOFF. You have seen this before, right?

Ms. WRIGHT. I have seen it in my deposition, but prior to that it was read to me by the Associated Press reporter that someone on your staff showed it to.

Mr. CHERTOFF. Putting aside your accusation about someone on the staff having shown it to somebody, it's addressed to Governor Clinton and yourself, correct?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. It has the characteristic checkmark that shows the Governor has read it?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. It says:

The State Police Commission is meeting Friday to review proposals for financing the communications system. The following are Tommy Goodwin's observations of where things stand.

Now before we continue, Tommy Goodwin was head of the State Police?

Ms. WRIGHT. That's correct.

Mr. CHERTOFF. And this is part of the process of the State Police Commission evaluating the bids and evaluating who was going to be selected to do this work. So we continue on.

Billy Simpson—appears to have switched his support from another vendor to Dan Lasater. Johnny Mitchum—solidly behind Lasater. Tennyson—Lasater. Mashburn—probably Lasater, since McElroy Bank did not submit proposal. Gene Raff—probably Lasater. Rockefeller—?

Am I correct that you were in the Governor's office keeping tabs on the vote count, the head count for Lasater?

Ms. WRIGHT. No, sir. You are not correct.

Mr. CHERTOFF. So Mr. Gaines just wrote this memo?

Ms. WRIGHT. No, sir. Colonel Goodwin passed on intelligence thinking we might be interested and want to know it. Mr. Gaines sent it on to me. I wasn't monitoring it. Mr. Gaines was not involved in this particular issue other than attending the meetings. I was monitoring the process for this. I wasn't keeping tabs on the votes. But I have to tell you, Mr. Chertoff, people kept telling me who was leaning what way all the time unsolicited, and this is yet another time.

Mr. CHERTOFF. So you didn't say to Mr. Gaines—

Ms. WRIGHT. I didn't even think this turns out to be good information.

Mr. CHERTOFF. You didn't say to Mr. Gaines or Colonel Goodwin, "Look. We are not part of the process of the selection of the firm. We don't need the vote count. We don't need to know where things stand, because we are indifferent. We are neutral." You didn't pass that message on when you got this memo, right?

Ms. WRIGHT. The concluding effect of this memo was on quite a different subject. Colonel Goodwin knew that we weren't involved in it. That doesn't mean to Colonel Goodwin that we don't care what was happening, and I think he assumed we might want to know how it looked like things were lining up.

It was an unsolicited piece of information. I'm not going to chew him out for sending me information. It was meaningless. We weren't monitoring. We didn't ask for it. I don't believe this is the way the vote count came out. It was passed secondhand to me from a staff person who was not intimately involved in communications with the State Police Commission about this process like I was.

Mr. CHERTOFF. Ms. Wright, this whole memo was written by Mr. Gaines, the same Mr. Gaines who wrote the memo a couple weeks later indicating that Hutton, Lasater and Raney had written the legislation. The whole purpose of the memo—and we'll get to the other writing in a minute—but the whole purpose of the memo was, as it originally came into you and the Governor, to give a head count on the selection of the particular investment company. Do you disagree with that?

Ms. WRIGHT. I do. The purpose of the memo was to convey to me information that Colonel Goodwin had given to me——

Mr. CHERTOFF. And about the head count of the investment company?

Ms. WRIGHT. He thought I might be interested.

Mr. CHERTOFF. You wrote a memo to the Governor. You said, "Gov, we have real problem here, since 'street talk' is that Lasater put in unreasonably low bid knowing he can raise it once he gets it." Then I must confess I can't read the next line, so I'll ask you to do it, since it's your writing.

Ms. WRIGHT. "I hope the ASP"—Arkansas State Police—"had experts review everything. Also, how does this"—and then there's not enough.

Mr. CHERTOFF. "How does this gibe with"—and you don't know what the rest of that is?

Ms. WRIGHT. I can't read it.

Mr. CHERTOFF. Now, you had heard street talk that Lasater was lowballing the bid?

Ms. WRIGHT. Yes, sir. I think I made reference earlier that investment banking companies play a very bloody kind of politics. They spread rumors, they send out alarms and red flags, and I was told dirty things about all of them. And what I was conveying to the Governor is that one of the contentions that was going on is that Lasater assumed that they could increase this after they got it, and they put it in at the low.

Mr. CHERTOFF. This street talk or rumor or scurrilous stuff you transmitted to the Governor in this memo, right?

Ms. WRIGHT. I did.

Mr. CHERTOFF. In fact, what you did was, you wrote it on the bottom of the memo with the head count. You didn't prepare a separate memo. I mean, you can only draw the conclusion from looking at the writing that the memo came in with the head count. You then added your information about the lowballing bid, and then the last writing is the Governor's writing, which is in the top right-hand side of the memo. Is that right? That's the Governor's writing? Number one there, it says, "Lasater should be told bid must be price." Is that it?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. So, the Governor directed you to tell Lasater that he should bid what he was actually going to make the price. Is that correct?

Ms. WRIGHT. He didn't direct me to, no.

Mr. CHERTOFF. "Lasater should be told"—underlined—"bid must be price." Was that a direction that someone should tell Lasater that what he bid ought to be the price?

Ms. WRIGHT. I know that I went to the team monitoring the process and said, "This is a rumor, and you all need to make certain that Lasater's bid is in compliance and that he understands."

Mr. CHERTOFF. Well, why did you bring this to the Governor's attention?

Ms. WRIGHT. I don't know. I don't remember why I brought it. I was just passing on rumors that were going on around—why I didn't write a separate memo? Governor Clinton told me that he

got more paper than any Governor in the history of western civilization—

Mr. CHERTOFF. Let's not talk about all paper.

You said, Ms. Wright, in this particular instance at the beginning of this part of the examination, this was totally hands off, totally out of the process.

You have repeated several times your concern here is the process. Given all of that, why would you convey the head count and your discussion about lowball bidding to the Governor? Why did the Governor need to know this? And why did the Governor then have to come back to you and have an instruction about what Lasater ought to be told about his bidding? Is that your interpretation of neutral, keep your hands out of the process?

Ms. WRIGHT. Keep our hands out of the selection of the firm. We were very much involved in the design of the process, Mr. Chertoff—very much involved. And making certain—

Mr. CHERTOFF. Is this about—

The CHAIRMAN. Wait, wait.

Ms. WRIGHT. Go ahead and talk, and maybe some time next week I'll come back and answer you.

The CHAIRMAN. Wait, wait, wait. It appears that this memo is a head count by the very members who are going to pick the firm, or on the members, and with specificity.

It would appear that, by the writer of this memo, this related to Lasater's position and being selected. It's always with respect to Lasater. "Johnny Mitchum—solidly behind Lasater." So-and-so behind Lasater. The third one, "probably Lasater." And they mention this other bank didn't bid. "Probably Lasater," the next fellow. Billy Simpson—support from another vendor, and then street talk about Lasater. And then the instruction, "Lasater should be told that he must meet the price."

So you see, the memo would indicate that certainly, there is someone who was very cognizant over at the police. By the way, it may have been a press person got a hold of this, but this is the first time I have seen this memo. And I try to make it a point, I do not review these matters prior. But it appears very clear here, Ms. Wright, that there was somebody that was really following this process as it related to how Lasater was lining up with respect to the selection committee.

The red light is on. Senator Sarbanes.

Senator SARBANES. Ms. Wright, I was interested. Did you say that you were called by a person in the press that asked you about this memo?

Ms. WRIGHT. Yes, sir. I was called by a reporter who had been shown this memo and had been given oral annotations about it.

Senator SARBANES. Was that before—

Ms. WRIGHT. Negative oral annotations.

Senator SARBANES. Was that before you had your deposition, or after?

Ms. WRIGHT. Before.

Senator SARBANES. So the first time you saw it in some official way was when you had your deposition?

Ms. WRIGHT. That's correct.

Senator SARBANES. And how far ahead of your deposition did that take place?

Ms. WRIGHT. A week or two.

Senator SARBANES. Mr. Chairman, I have been worried about this problem, because this was not the only instance of this happening. I mean, we encounter these press stories and material leaking, and I think it's a reasonable surmise that it's coming out of this Committee, I regret to say. And I think we should meet and discuss that.

I thought we agreed that we would ask the FBI to look—I mean, I don't mind Ms. Wright being confronted here today with this memo and questioned in public session, or indeed at her deposition. But obviously, things are amiss if staff people with access to this material are leaking it to the press in order to set a certain framework or climate ahead of time, and this isn't the only instance of such an occurrence. I think the Committee needs to address it.

We are now into this final 8-week period, and I can't think of anything that would poison our ability to carry forward in some reasonable fashion than this activity. We have here Senate investigators for the Senate Whitewater Committee, internal memos assembled by Senate investigators, et cetera. And then they go on and lay out this material, which has not yet been put in the public domain. It's not a reasonable way to do business, obviously, and I think it's going to simply poison.

Now it's my understanding we agreed, did we not, that we would have the FBI look into these leaks when they occur?

The CHAIRMAN. I will discuss with the Ranking Member—

Senator SARBANES. I think we did that back toward the end of the year.

The CHAIRMAN. —the manner by which to pursue who, if anyone, from this staff may have leaked this. It may have been the staff. It may not be the staff. But we will take that up, and will take the necessary action. I think we should proceed now.

Senator SARBANES. Well, I very much hope we can bring the FBI into it. We had this discussion, as you will recall, back in the fall. We were quite concerned about what was transpiring.

The CHAIRMAN. Now this took place back some time in January? Is that right?

Ms. WRIGHT. It was in February, I believe, sir.

The CHAIRMAN. February.

Mr. COHEN. We can give you a precise date, Mr. Chairman.

Ms. WRIGHT. Almost all of these documents which you have provided me in this line of questioning regarding Mr. Lasater were read to me by that reporter.

Senator SARBANES. The particular newspaper article was April 8th. When the discussion occurred, I don't know.

The CHAIRMAN. January or February sometime. You'll provide us a date?

Mr. COHEN. We can, Mr. Chairman. There were some telephone calls that Ms. Wright and I were on with a reporter who told us that he had been shown the documents, permitted to view them. We asked for a copy of the documents just to verify that, in fact, that was so. He said he wasn't permitted to take the document

with him, but was permitted to review it, and copied it down and read us a scrawl that he couldn't wholly interpret.

Ms. WRIGHT. And told us whose handwriting said what.

The CHAIRMAN. All right.

Ms. WRIGHT. We did give the staff in my second deposition a copy of the letter that the reporter sent to me initially about wanting to talk to me on these documents. So the date of the contact is in that letter.

The CHAIRMAN. We'll pursue it.

Senator SARBANES. I yield to Mr. Cole.

Mr. COLE. Thank you, Senator.

If we could put the May 1, 1985 memorandum back up.

Mr. COHEN. Excuse me, Mr. Cole. I apologize.

Mr. Chairman, we had provided the Committee on the second day, and it's attached at the end of the deposition for the second day, Senator Sarbanes and Mr. Chairman.

Mr. COLE. Ms. Wright, if I could ask you to look for just a moment more at this memorandum, and I think we have covered it thoroughly. But I do want to reassure you about one thing, because as I understood your testimony, you were taking issue with the characterization of this memorandum from Mr. Gaines as somehow an effort by the Governor's office to keep tabs on the bidding process. Is that correct?

Ms. WRIGHT. That is correct.

Mr. COLE. And in fact, I think since this memo has had such scrutiny, it's worthwhile to note what the author of the memorandum said about it, Mr. Gaines, whose deposition Committee staff took on February 16. And at page 71, he was asked:

Question: Do you recall why Mr. Goodwin would have been calling you to report on this?

Answer: No, unless—just conveying information or observations he was making. Again, I mean I can't answer for him, but if he had spoken to the individual members and had a sense of how they were leaning on this matter, he may have felt that it needed to be conveyed to the Governor's office, and called and gave me a rundown of it.

And I think important, then, for your purposes, Ms. Wright, he was asked:

Question: Before receiving the call from Mr. Goodwin, were you aware of any interest that the Governor or Ms. Wright had expressed with regard to which underwriting company received the underwriting contract?

Answer: I don't think so.

So his testimony, which the Committee has in evidence, confirms your recollection that you and the Governor's office had not asked that he or anyone else keep tabs on this process.

I would also like to show you a document, since we are looking at documents from this time period in May 1985, I guess the issue being what influence Mr. Lasater did or didn't have on the Governor's office. This is a memorandum dated May 2, 1985, if we can put that up, it is from Mr. Nash to, it appears to read—perhaps you can help me with the handwriting—"BC/Betsey"—and someone else that I can't read there. Ms. Wright, do you recognize that as a memorandum to you and others from Mr. Nash?

Ms. WRIGHT. Correct.

Mr. COLE. Who was Mr. Nash at that time?

Ms. WRIGHT. He was our Economic Development Liaison.

Mr. COLE. So would he have been the staff liaison with matters relating to the Arkansas Development Finance Authority?

Ms. WRIGHT. That's correct.

Mr. COLE. Am I correct in understanding that at this time, most of the bond underwriting business that the State of Arkansas was doing was through the Arkansas Development Finance Authority, or would be through the Arkansas Development Finance Authority?

Ms. WRIGHT. That's correct.

Mr. COLE. The handwriting on this appears to be: "Dan Lasater gave me this letter when I met with him on Wednesday for lunch. Bell is not my kind of person. Has always caused the agency (AHDA) problems." Just to put this in context, let's put up on the display the letter that was attached to this memorandum and it's dated April 10, 1985. I think you have been given a copy of that. This is a letter to Maurice Smith from a Mr. Dennis Mills, from the Mortgage Bankers Association of Arkansas, recommending that James T. Bell be appointed to the Arkansas Development Finance Agency Board.

First let me ask, Ms. Wright: am I correct in reading this letter and Mr. Nash's cover memorandum to you and Governor Clinton as indicating that Mr. Nash does not agree that Mr. Bell is the person of his choice for appointment to the ADFA Board, notwithstanding Mr. Lasater's recommendation?

Ms. WRIGHT. Yes. It was Mr. Nash's way of making his comment.

Mr. COLE. So what we have here is that Mr. Lasater is putting someone's name forward to be named to the Board that controls the State bond business, and you have a staff member that's reporting to you and the Governor that Mr. Lasater's recommendation is not his choice for that Board. Do you recall whether Mr. Bell was, in fact, appointed to that Board?

Ms. WRIGHT. I'm fairly certain he was not.

Mr. COLE. I think we could confirm that for you if we could put up and provide to you a copy of a January 24, 1986 listing of the current members of the Arkansas Development Finance Authority Board, and you'll see that Mr. Bell is not listed there.

As I read these documents—and please correct me if I'm wrong—this indicates that at precisely the time we are talking about, in May 1985, Mr. Lasater had lunch with a staff member who was responsible for this Board, passed on a letter of recommendation, recommended a candidate, and that candidate was not appointed to the Board. Is that correct?

Ms. WRIGHT. Oh, there were more contacts with us by Mr. Lasater's company on behalf of Mr. Bell. I was contacted two or three times by people who worked for him. Mr. Bell was not appointed.

Mr. COLE. So Mr. Bell was not appointed. Mr. Lasater testified that he met with Governor Clinton, complained about the amount of bond business that he got, and by his own accounting didn't get any more bond business. And that's all consistent with your recollection of what happened 11 years ago, now?

Senator SARBANES. The Governor's office gets contacted all the time by people who want somebody else appointed to one or another board and commission, don't they?

Ms. WRIGHT. Yes, sir. We invited it.

Senator SARBANES. Pardon?

Ms. WRIGHT. We invited it.

Senator SARBANES. Yes. In a sense, you were sort of flooded by people saying, "Well, I want so-and-so to go on the Board or so-and-so to go on the Commission." I mean, it seems to me it's standard operating procedure in Governor's offices across the country, as far as I know. Wasn't that the case?

Ms. WRIGHT. Yes, sir.

Mr. COLE. One more area of inquiry, Ms. Wright, that I think has been widely reported in the press, and likely has come up in Committee's depositions, and is likely to come up in our hearings. Mr. Lasater ultimately pleaded guilty to a Federal drug charge. Is that correct?

Ms. WRIGHT. That's correct.

Mr. COLE. Do you recall at some later time, did he make an application to the Governor's office for an approval of the application he had submitted to the Federal firearms authorities to be able to carry a firearm for hunting purposes?

Ms. WRIGHT. I believe, Mr. Cole, that happened after I left the Governor's staff. But I do recall from the 1992 campaign that, yes.

Mr. COLE. What has been reported in the newspapers is that Mr. Lasater was pardoned by Governor Clinton.

Ms. WRIGHT. No. The Governor has no authority to pardon a Federal conviction.

Mr. COLE. I thought, that since you were the Governor's Chief of Staff, you would be a good witness to speak to that issue.

Ms. WRIGHT. Oh, absolutely.

Mr. COLE. Because I think it's been reported erroneously.

Ms. WRIGHT. A conditional pardon by a Governor on a Federal conviction only allows them to apply to ATF for firearms.

Mr. COLE. So not only were we dealing with a Federal conviction here, but the license that Mr. Lasater was seeking, which he testified was for permission to carry a firearm when hunting, was an application to the Federal authorities, and he just needed approval from the Governor's office to submit that application?

Ms. WRIGHT. To apply; that's correct.

Mr. COLE. So it was not a pardon? Bill Clinton did not pardon Dan Lasater?

Ms. WRIGHT. No. Governors have no authority to pardon Federal criminals.

Mr. COLE. Thank you. That's helpful.

The CHAIRMAN. Mr. Chertoff.

Ms. WRIGHT. Could I have a break?

The CHAIRMAN. Absolutely. We have a vote, so it comes at a good time. We'll take 10 minutes.

Senator SARBANES. Mr. Chairman, could I just inquire how much longer it's estimated—

Ms. WRIGHT. Twenty or 30 minutes.

Senator SARBANES. No, no, no. I'm inquiring of Mr. Chertoff.

The CHAIRMAN. That's what she's suggesting; 20 or 30 minutes.

Senator SARBANES. I mean, look. I don't mind if after lunch you had said, we are going to need 3 or 4 hours here to finish up.

The CHAIRMAN. I don't think anybody anticipated—

Senator SARBANES. If you had told us that then we could have made plans accordingly. But to be told 20 to 30 minutes when we took the break, and then accounting for a little bit of time on this side, and then to come back and start at 2:00 p.m., and now it's 5:00 p.m., and we are still going on.

Now, you can go on for as long as you want, as can this side. And obviously, you should go on as long as you feel it's necessary. But just give us a realistic evaluation or estimate of how long you are planning to proceed, that's all. Then people can make their plans accordingly.

The CHAIRMAN. Let's see if we can't get back here within the next 10 minutes, so that we can try to conclude this, certainly before 6:00 p.m.

[Recess.]

The CHAIRMAN. We are going to see if we can't wrap this up.

Mr. CHERTOFF. Again, I still want to focus your attention on the period of time before the final vote on the Arkansas State Police Commission to award the contract to the Lasater group. Was there a point right before then where you became concerned that there might be a problem with the Hutton component of that Lasater group because of some unrelated investigation involving checks?

Ms. WRIGHT. Involving checks?

Mr. CHERTOFF. Yes.

Ms. WRIGHT. As I have already testified today, Mr. Chertoff, I know that at some point, I did admonish the people working on the Police Commission decision to make certain that there wouldn't be a bad PR impact from the Hutton legal problems they had had.

The CHAIRMAN. Which are totally unrelated to anything—

Ms. WRIGHT. In another State, some other thing.

The CHAIRMAN. That was a national thing, totally unrelated.

Ms. WRIGHT. Thank you. Thank you.

Mr. CHERTOFF. Were you also concerned about Lasater's reputation at this point in time, in the early part of 1985, and the impact that might have on reputational issues? Did you have Lasater checked out in terms of whether he was being investigated?

Ms. WRIGHT. I probably suggested to the State Police Director that he find out whether there were any investigations going on.

Mr. CHERTOFF. What caused you to do that?

Ms. WRIGHT. Oh, either another rumor or whatever. I basically think they probably should have made sure nobody had any law enforcement problems, and I probably told them that too, but with—I was getting a lot of rumors and allegations about people, but Dan Lasater had always been the subject of things I was told.

Mr. CHERTOFF. What things?

Ms. WRIGHT. Oh, God. I didn't maintain a Dan Lasater catalogue, Mr. Chertoff. Things about—it was like the street talk is that it's a low bid, or that it was drug use. And it's a very difficult thing in public responsibility, Mr. Chertoff, as I am sure you are far more learned than I because of your previous experiences and positions, but you get told a rumor and you have to balance that very carefully. If it isn't true, you don't want to damage somebody because of it.

And I did, over the course of the years before Mr. Lasater's conviction, I did have Colonel Goodwin check around with law enforce-

ment agencies when rumors were hot and heavy to see if anyone was investigating him.

Mr. CHERTOFF. In particular, you asked Colonel Goodwin to find out if he was being investigated for drug activities?

Ms. WRIGHT. Probably.

Mr. CHERTOFF. And you knew at this point in time, I take it—and when I say “this point in time,” I mean by March or April of 1985—you knew that there was information that, in fact, Mr. Lasater had paid a drug debt for Governor Clinton’s brother, Roger?

Ms. WRIGHT. No, sir, I don’t think I knew that.

Mr. CHERTOFF. Wasn’t Roger Clinton testifying as a witness in a Federal criminal narcotics trial in U.S. District Court in Arkansas during the early part of 1985 in which he brought up Dan Lasater’s name?

Ms. WRIGHT. I don’t remember.

Mr. CHERTOFF. Would it help you to remember if I showed you a newspaper article that was dated February 26, 1985, with the headline that says, “Governor’s brother testifies at Spa attorney’s drug trial”?

Ms. WRIGHT. I now remember the trial that he testified in, yes.

Mr. CHERTOFF. The trial was of a guy named Anderson; right?

Ms. WRIGHT. Yes, sir.

Mr. CHERTOFF. And Anderson was being tried for narcotics distribution?

Ms. WRIGHT. I don’t remember the charges.

Mr. CHERTOFF. It was a drug case, right?

Ms. WRIGHT. Yes, it was a drug case as I recall.

Mr. CHERTOFF. Roger Clinton testified as a witness in the case; is that right?

Ms. WRIGHT. Right.

Mr. CHERTOFF. He testified in the case, and this case was going on literally at the same time that you were gearing up to do this bond contract, Roger Clinton testified that Lasater had loaned him \$8,000 to help him clear some drug debts; right?

Ms. WRIGHT. If that’s what it says. I didn’t follow Roger Clinton’s testimony carefully. I mean, I can’t affirm what Roger Clinton said, I’m sorry. I haven’t boned up on that.

Mr. CHERTOFF. Whether you boned up or not, putting aside vague rumors, there was at the very same time you were dealing with Lasater as one of the bidders on this issue, a Federal criminal trial in which the Governor’s brother was giving sworn testimony under oath about having received a loan from Dan Lasater for \$8,000 to clear the Governor’s brother’s drug debts. That’s not a rumor; that was sworn testimony at the same time. Is it your testimony that this news totally escaped you?

Ms. WRIGHT. No, sir, it isn’t, but I do not draw a conclusion from that that Dan Lasater was involved in drugs.

Mr. CHERTOFF. Well, we’ll come to that in a second. Do you draw a conclusion from that that Dan Lasater had, in fact, done a substantial favor for Governor Clinton’s brother by loaning him money to clear his drug debts?

Ms. WRIGHT. I would call that a substantial—\$8,000 to Roger Clinton as substantial, yes.

Mr. CHERTOFF. Did you raise with the Governor whether there was an appearance issue that had to be dealt with if the Governor was involved in making decisions on a bond issue going on at the very same time this was being testified about in which Dan Lasater was the bidder? Did you address this issue?

Ms. WRIGHT. Mr. Chertoff, I didn't have to address that issue. We were not involved in the selection of the finance team on that State issue. We were involved, as I have told you, in the establishment and maintenance of a process by which the State Police Commission made that selection.

The award was based on bid and proposals that were in compliance with the process that was developed after a piece of legislation was passed and signed into law within that process. We were not involved in the selection of a firm.

Mr. CHERTOFF. Now, we have already heard the testimony about who the lawyer was and who became the lawyer, enacted the legislation, we have seen the memo, the head count memo and the messages back and forth to you and the Governor on Lasater's bid. And you have also testified to us that you asked Colonel Goodwin to see whether there was an investigation pending of Mr. Lasater.

Were you aware that at the very same trial, this one in which Roger Clinton was testifying at the very same time in February 1985, that the defendant testified that he had been told or he had been asked to set up a sting operation or to target for law enforcement a number of people, including Dan Lasater?

Ms. WRIGHT. I might have been aware. I don't recall.

Mr. CHERTOFF. So that would indicate that, as of that period of time, there was actually sworn testimony in Federal Court that law enforcement authorities were looking to make a case against Dan Lasater. This escaped your notice or Colonel Goodwin's notice when this review of Dan Lasater's background was being done?

Ms. WRIGHT. I don't know whether it escaped my notice or not. I told you, Mr. Chertoff, that on two or three occasions over the years that I was there, I did ask Colonel Goodwin to see whether there were drug investigations going on of Mr. Lasater. I recall that most of them came in the form of rumors but perhaps it came in the form of testimonies. I didn't want State business going to someone who was under drug investigation.

Mr. CHERTOFF. Did the Governor meet with Colonel Goodwin about the selection or about the particular proposals that were coming in from the investment companies before the award was made on May 10th?

Ms. WRIGHT. I don't believe he did.

Mr. CHERTOFF. Did the Governor meet with Colonel Goodwin in particular to ask him his opinion of the Lasater proposal before the selection was made on May 10th?

Ms. WRIGHT. I don't recall that he did.

Mr. CHERTOFF. Didn't he, in fact, do it in your office?

Ms. WRIGHT. The Governor would go to a meeting in my office?

Mr. CHERTOFF. With Colonel Goodwin about the Lasater proposal before the award was made.

Ms. WRIGHT. I might have been having a meeting with Colonel Goodwin on matters not about who to select on this bid and the Governor may have walked by and come in, but in the 7 years that

I was honored to have that office, the Governor had never scheduled for a meeting in my office.

Mr. CHERTOFF. Putting aside whether it was a scheduled meeting or a meeting that happened to unfold because people found themselves there. Was there a meeting or a discussion in your office before the bid was awarded by the Police Commission in which the Governor specifically asked Colonel Goodwin what he thought of Lasater's bid?

Ms. WRIGHT. I don't recall it but there may have been.

Mr. CHERTOFF. Is there any particular reason why, before the bid was awarded, the Governor would have been making a specific inquiry of Colonel Goodwin about Lasater and his bid?

Ms. WRIGHT. Maybe by telling him rumors of an allegation about Lasater's bid, like there's street talk that it's low——

Mr. CHERTOFF. I don't want to——

Ms. WRIGHT. —and he wasn't quite as good about being precise as I in remembering that the issue here is to make sure it was in compliance, and it was audited or evaluated properly, analyzed correctly.

Mr. CHERTOFF. I want to be more precise, and I don't want you to speculate. If you don't know, don't remember, I'm not trying to force you to give us testimony that you can't comfortably give us.

Isn't it a fact that there was a meeting, whether it be scheduled or unscheduled, in your boardroom or your conference room at which the Governor was present and Colonel Goodwin was present in which the Governor asked for Colonel Goodwin's opinion about the Lasater proposal before the selection had been made?

Ms. WRIGHT. I don't recall it, Mr. Chertoff.

Mr. CHERTOFF. Fair enough. Now let me finally turn to the issue of the review of the award by, I guess you said a communications study committee of the legislature that came after the Police Commission had awarded the contract to Lasater. I think your testimony was that after that award by the Police Commission, it went back to this legislative committee for review; right?

Ms. WRIGHT. For review and advice, I believe.

Mr. CHERTOFF. Now during this, were you present or involved in this review process?

Ms. WRIGHT. I was not the member of the Governor's staff who was a member of that committee. I was—at this point we had passed another major milestone toward getting a new communications system for the State Police, and I was back involved in trying to expedite its final approval and getting it installed.

Mr. CHERTOFF. Who is Mr. Erxleben?

Ms. WRIGHT. He was the State Purchasing Director, Republican appointee of Governor White's, who we maintained and who I asked to be a part of the team at the State Police Commission to design their process for proposal.

Mr. CHERTOFF. Now, I want to put it in context. This is now after Lasater gets the contract and you are in the post-award process, and you're setting up the documentation to make this bond deal go through. Do you recall learning that one of the Senators on the Committee specifically raised the question with Mr. Erxleben about whether the Mitchell firm was representing the State or the bond company in this transaction?

Ms. WRIGHT. I remember that Senator Nelson, the Chairman of the Committee, expressed to us—he was obviously being fed a lot of the same information—expressed to us concerns about both the decision to finance and buy bonds and about the firm. I recall that an opposing losing firm, a competitive losing firm, directly appealed to try to get the Committee to revoke it. I recall having the State Police Commission and members of the award team go to that Senator and try to talk him through and walk him through what was going on here and what the plan was.

I recall that Senator saying finally publicly that he didn't understand all this bond stuff and so therefore he wanted it to go to the interim committee on behalf of the legislature, the legislative council, and it went. I think there were two different meetings or two different votes, and finally the review and advice was given.

Mr. CHERTOFF. To be brief, my question to you is, was there, in fact, a question raised after the fact about who exactly the Mitchell firm was representing? And this would be in the post-award.

Ms. WRIGHT. It could be, sir. I don't recall that. As you can tell, I recall—I don't recall questions about the Mitchell firm's representation and involvement about that piece of legislation.

Mr. CHERTOFF. I really only have about a minute more but I will hold back. I want to show you DKS N 17322.

The CHAIRMAN. Let's wait until we give it out.

Mr. CHERTOFF. It is a handwritten note. Do you have the document?

Ms. WRIGHT. I do, sir.

Mr. CHERTOFF. Do you recognize the handwriting?

Ms. WRIGHT. I recognize the category of the document, and this was one of many documents which was prepared at the Presidential Campaign before I arrived there, prepared by people who didn't know Arkansas, didn't know the people. This was the document I instantly discarded because there was nothing about it that linked the right people to the right information or had any bearing on truth. So it was deep sixed, file 13'd, something.

Mr. CHERTOFF. It says, "Lasater ADFA." Was this prepared by someone in response to an L.A. Times story?

Ms. WRIGHT. I have no idea. No, no, I was there as the L.A. Times story—I was there for the L.A. Times story on Lasater and ADFA, and this—I definitely—people outside of Arkansas refused to give me information on that.

Mr. CHERTOFF. Since you recognize this to have been a campaign document, it makes a reference to "Buddy Young and Mike Gould—2 more days." Who were those people?

Ms. WRIGHT. Buddy Young was the Governor's head of security. Gould was the press secretary.

Mr. CHERTOFF. "Clinton and Lasater in deals with State money and State Police bond for radios in 1985 or 1986. New high-band radio system for State Police, \$20 million." Was it your understanding this related to a story that either had appeared or was being worked on by the L.A. Times?

Ms. WRIGHT. It wasn't my understanding. It was an irrelevant document. To me it is not a document I dealt with once I arrived at the campaign. My guess, in your reading it with this detail at this point, is that within a couple of days of my arrival, the L.A.

Times did a story on the State Police Commission award. And this may have, in fact, been notes taken by a volunteer on—or someone on the staff that the L.A. Times was working on a story on that.

Mr. CHERTOFF. You don't recognize the handwriting?

Ms. WRIGHT. I recognize it as being someone who worked in my area, and I'm sorry, it's just been too long for me to assign names.

Mr. CHERTOFF. It says at the bottom, "L.D. Brown—used to be in Governor's security—concerned re: what he would say." What's that mean?

Ms. WRIGHT. It means nothing to me. It's jibberish.

Mr. CHERTOFF. Did you know who Mr. Brown was?

Ms. WRIGHT. I certainly did.

Mr. CHERTOFF. Was he a member at one time of the Governor's security detail?

Ms. WRIGHT. Yes.

Mr. CHERTOFF. Did he have any knowledge concerning Lasater, to your knowledge?

Ms. WRIGHT. I have no idea.

Mr. CHERTOFF. Have you spoken to him since the Presidential election?

Ms. WRIGHT. To Mr. Brown, no, sir.

Mr. CHERTOFF. Have you asked anybody else to speak to him?

Ms. WRIGHT. No, sir.

Mr. CHERTOFF. Well, let me make sure I framed the question properly. When did you start with the campaign?

Ms. WRIGHT. Toward the end of March, right before the Sunday edition of the L.A. Times carrying the Dan Lasater story.

Mr. CHERTOFF. So you do remember the story?

Ms. WRIGHT. I do, sir. It made me so angry because it so distorted the truth of how that system was awarded and bid that it made me angry enough to decide yes, I would resign my fellowship at Harvard, and I would come back to Little Rock and work on the campaign.

Mr. CHERTOFF. So then between March 1992, when you joined the campaign and the present day, did you ever either yourself or through somebody else ask or direct that somebody speak to L.D. Brown?

Ms. WRIGHT. About what?

Mr. CHERTOFF. Well, we'll get into topic later. Did you ask anybody to communicate with Mr. Brown?

Mr. COHEN. Mr. Chairman, could I object on sort of scope grounds?

The CHAIRMAN. I will state that I am going to ask Counsel to be more specific if you can be.

Mr. CHERTOFF. What I would like to do, if I may, Mr. Chairman, is first find out if the witness ever asked—without getting to topic.

The CHAIRMAN. After you came to work at the campaign back in March 1992—is that right, late March 1992—did you have occasion to seek out Mr. Brown to speak to Mr. Brown on anything specific?

Senator SARBANES. Mr. Chairman, wouldn't she have had to speak to him about something within the scope of our Resolution?

The CHAIRMAN. Well, obviously, so let me ask you, and I don't say "obviously." I'm not talking about an incidental, saying hello, somebody walking one way, another person walking another way.

Did you have occasion to seek him out to speak to him in connection with any of the matters—and if you want me to list them—that the Committee is looking into, and you are aware of the areas of the Committee's interest? Did you have occasion to speak to Mr. Brown specifically, whether in relation to Lasater or anything else?

Ms. WRIGHT. I recall running into Mr. Brown a couple of times and the extent of it was hello and how are you, how is Peggy, and how are the kids.

The CHAIRMAN. So other than just running into him and saying hello—in other words, that's exactly the thing I want to exclude.

Ms. WRIGHT. I can't remember any other exchange with him.

The CHAIRMAN. You had no other exchanges, you never had occasion to seek him out to speak to him?

Ms. WRIGHT. I don't recall having one. By this time, Mr. Brown was quite an adversary of the President's, or of the Governor's.

The CHAIRMAN. Did you send anyone to Mr. Brown to speak to him with respect to matters involving the campaign or any of the matters that we are looking into? The reason I mention that is because you were the damage control person at the campaign; right?

Ms. WRIGHT. I was the damage control person and I now that I—that what you're—I'm back into guessing what you're dealing with, where this is going. It comes to me clear out of the blue. I do know that he made an allegation that I sent someone to visit with him.

Senator SARBANES. Well, that allegation, if I'm working off press reports, is outside the scope of this Resolution.

The CHAIRMAN. I'm not——

Senator SARBANES. Well, I mean, if we are going——

The CHAIRMAN. I am asking the witness if she asked or directed anybody to speak to L.D. Brown now, and as it related to any of the matters that we are looking into or when she was the campaign damage control person. So I can't get so specific that I can go through a list of things. We would be here for two days. If she did, say yes, or if she didn't, say no. If you don't recall, say you don't recall.

Senator SARBANES. Mr. Chairman, if she talked to L.D. Brown about matters outside the scope of this Resolution, she shouldn't be asked about that. She should be asked about matters within the scope.

The CHAIRMAN. Senator, we have provided everyone with wide authority here, and I'm going to ask again. She's indicated that other than—and if the witness wishes to correct the testimony or reflect on it—an occasional how are the kids, et cetera, that she has not spoken to him. Is that a fair statement?

Ms. WRIGHT. I am still a bit confused about why we are having this conversation, so I am going to try to see if I can——

The CHAIRMAN. I'll tell you what, because I have a document here that says "L.D. Brown," what's that?

Mr. CHERTOFF. "Used to be in Governor's security—Concerned re: what he would say." And it's headed "Lasater/ADFA."

The CHAIRMAN. Where did we get this from?

Mr. CHERTOFF. You have indicated it came from the campaign.

The CHAIRMAN. Where did you get this from?

Mr. CHERTOFF. We got it from Mr. Kendall's production.

The CHAIRMAN. We got this from Mr. Kendall's production, apparently came from the campaign. You were there, we have this, we are following this line. We are asking you, did you have occasion to speak to L.D. Brown with respect to either the Lasater matter, campaign matters, damage control, et cetera.

Senator SARBANES. No, no, no. The Lasater matter, I think, is within the scope but not the other things.

The CHAIRMAN. I am not attempting to draw you into a situation where you saw him at a gathering and said hello or you asked how are the children, or the pleasantries. Did you have occasion to speak to L.D. Brown after the 29th or late March, after you came on to the campaign team?

Senator SARBANES. Is this about Lasater/AFDA matters, as this memo is headed?

The CHAIRMAN. You know something, Senator, if indeed, Ms. Wright had no conversations with him, she will tell us she had none. Now, she indicated previously that she does not recall any and that the only ones that she may have had were those that would be normal with somebody who is working with the Governor who she might bump into, say hello or how are the children. So I am asking that question again. Do you recall having any specific conversations with L.D. Brown as it relates to—let's start being a little more specific—Lasater.

Ms. WRIGHT. No, sir, it would never occur to me that L.D. Brown would be a source of any kind of information about Dan Lasater. I have no imagination why one would ask him about Dan Lasater.

The CHAIRMAN. The only reason I mention Lasater, specifically, is because we have here a memo, "Lasater/ADFA." This comes from Mr. Kendall's law firm. And it indicates L.D. Brown—his name is there. Now, you're the damage control person, you were working on the campaign. Did you attempt to make contact with him with respect to damage control?

Ms. WRIGHT. I have already said that that is jibberish, it is unrelated, it was written by people who didn't know how to make A and B follow each other. It wasn't anything I dealt with. I knew about the State Police Communication System, I knew who to contact on my own. I didn't need someone who barely knew where Arkansas was putting L.D. Brown's name on a piece of paper to guide me.

I never spoke to Mr. Brown about anything substantive except that I did have a genuine interest in his wife and children.

The CHAIRMAN. Fine. We understand that. And you never sent anybody to speak to him about anything of any substance?

Ms. WRIGHT. Mr. Chairman, I am aware that he has alleged in right-wing publications that I sent someone to talk to him. I assigned no one to talk to him. There was a person who worked with me who did end up talking to him occasionally. He did send me messages back through her. And nothing that I can recall of that had one iota of connection or relationship to anything within the scope or interest of this Committee. It barely did to me.

The CHAIRMAN. When you said he sent you back messages from this person, did this person work for you, work for the campaign?

Ms. WRIGHT. Yes, sir. Yes, sir.

The CHAIRMAN. On the campaign?

Ms. WRIGHT. Yes, sir.

The CHAIRMAN. What message did he send back to you?

Ms. WRIGHT. I have not gone back to try to refresh my mind. I don't carry it around. I know it had nothing to do with Madison Guaranty, ADFA, Dan Lasater, Jim McDougal, whatever the scope of your—I know it didn't have anything to do with this Committee's interests.

The CHAIRMAN. We have no further questions. I believe we have concluded.

Senator SARBANES. Mr. Ben-Veniste.

Ms. WRIGHT. Thank you.

Mr. BEN-VENISTE. I will only take a New York minute as opposed to a Majority minute.

The CHAIRMAN. It's a New Jersey minute now.

Mr. COHEN. In that case, you're done.

Mr. BEN-VENISTE. Almost. The involvement of your office in the selection process for the bond underwriting was nonexistent, is that your testimony? You did not try to get Mr. Lasater to get selected, and you did not try to knock out Mr. Lasater?

Ms. WRIGHT. That is correct, we were not involved in the selection.

Mr. BEN-VENISTE. Both of those propositions were put to you: Whether you tried to get the business for Mr. Lasater, you have said no; whether you got involved in trying to knock Mr. Lasater out because Mr. Chertoff has read you some headlines about Roger Clinton testifying at trial where Mr. Lasater gave him a loan unrelated to anything improper, that also did not concern you; is that correct, because you did not make the decision of who to select?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. And finally, with respect to Mr. Lasater, even if somebody in some law enforcement capacity had expressed some interest in trying to run a sting operation against him, as Mr. Chertoff suggests, that, in your view, would not provide the basis for your office to try to knock out E.F. Hutton & Company, and everybody else associated with this bid proposal, on the basis of that kind of a rumor; is that correct?

Ms. WRIGHT. That's correct.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. No.

The CHAIRMAN. I want to thank counsel and I want to thank you for coming in. I'm sorry we went longer than anticipated. We stand in recess until Tuesday at 10:00 a.m.

[Whereupon, at 6:16 p.m., the hearing was adjourned, to reconvene at 10:00 a.m., on Tuesday, April 30, 1996.]

[Appendix for record to follow:]



ARKANSAS

STATE BANK
DEPARTMENTTower Bldg. - Suite 500
323 Center Street
Little Rock, Arkansas 72201-2513Martin O. Jackson
Commissioner

November 1, 1995

Mr. Charles F. Campbell
Vice President
Security Bank
P. O. Box 570
Paragould, Arkansas 72350Re: Note No. 857-585 - Bill Clinton
Note balance - \$10,000.00 - Accrued interest - \$2,322.42

Dear Charles:

I am enclosing the Extension Agreement which Governor Bill Clinton signed yesterday.

It is my understanding that Jim McDougal, a close friend as well as business associate of Governor Clinton, is to forward to you a check for \$2,322.42 representing the interest due on the note.

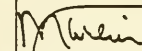
In discussing this matter with Jim today via a pay telephone, he indicated that he intended to make a \$5 or \$5,000 principal reduction in addition to the interest payment.

After making the appropriate approval of the Extension Agreement, please return the appropriate copy to me and I will personally deliver it to Governor Clinton. Also, please return copies of the receipt to me.

So that Jim McDougal may know that the proper credit has been given, please provide Jim with a copy of the receipt for the payment of the interest and principal along with a copy of the Extension Agreement.

I trust this meets with your approval and that it will soon remove the note from the past due list.

Sincerely,


 Martin O. Jackson
 Bank Commissioner

MDJ/s

Enclosure

cc: Jim McDougal

DKSN001244

CONFIDENTIAL

DKRT200774

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR

ROUTE SLIP

To: *[Signature]*Date: *8/11*From: *aw*☐ For Approval☐ For Signature☐ For Comment☐ Prepare Reply☐ For Your Information☐ For Necessary Action☐ Initial And Forward☐ Note And Return☐ Please See Me☐ As Requested

Remarks:

White Water stock
(McGargal's company)

Will have ? (pinner)
to firm's current problem

If so, I'm worried about

it. - NO - Do it
have any

DKSN013309

More *B*

2447

JIM McDUGAL

P. O. Box 1583

Little Rock, Arkansas 72203

January 20, 1986

Ms. Janie Sanders, Collector
Marion County Courthouse
Yellville, Arkansas 72687

Dear Ms. Sanders:

I am having a heck-of-a hard time keeping up with whether the people who owe us on the various White Water tracts are keeping their taxes paid.

If there is any way that you can advise me as to any delinquencies in the White Water Subdivision, I will greatly appreciate it.

Sincerely,

Jim McDugal
Jim McDugal

TM/ss

DKSN002794

1211 Q Did she say anything more to you during
1212 that conversation about the picking up of this cash

Page 319

1213 at the bank or anything Mr. Lindsey said to you?

1214 A No. I think that is all I remember.

1215 Q I just want to vacuum your knowledge about
1216 this matter.

1217 MR. COHEN: What a strange word to hear
1218 coming from you. That can be used in an innocent
1219 way, I understand.

1220 MR. GIUFFRÀ: Some people say

1221 BY MR. GIUFFRÀ:

1222 Q Did you recall anything more about your
1223 conversation with Mr. Lindsey?

1224 A No.

1225 Q Have you spoken to anyone else about this
1226 conversation you had with Ms. Cooper and then the
1227 conversation with Mr. Lindsey, other than your
1228 lawyer?

1229 A And I just now remembered it and told him.

1230 MR. COHEN: Other than your lawyer.

1231 BY MR. GIUFFRÀ:

1232 Q Did you discuss this with the Independent
1233 Counsel?

1234 MR. COHEN: None of your business what she

Page 320

1235 has discussed with the Independent Counsel. It would
1236 be in my judgment a violation of all sorts of
1237 things.

1238 MR. GIUFFRÀ: We actually have asked
1239 witnesses whether they have in fact said this, this
1240 has been in public testimony, what they have told the
1241 Independent Counsel.

1242 MR. COHEN: Before I would let her answer
1243 that question, I would have to consult with people as
1244 to the Independent Counsel.

1245 BY MR. GIUFFRÀ:

1246 Q Is there any documentation reflecting this
1247 communication with Ms. Cooper?

1248 A No.

1249 Q Why did your role change between the -

1250 A Wait, I didn't finish.

1251 Q Okay, Giuffrè.

1252 A I'm in trouble again, aren't I?

1253 MR. COHEN: Not at all.

1254 BY MR. GIUFFRÀ:

1255 Q You have the Cooper conversation and the
1256 Lindsey conversation.

Page 321

1257 A Well, then there is a third conversation.

1258 I was having a conversation at some point, and I
1259 don't remember where or why or how or what the
1260 subject was, but the issue of the '90 campaign came
1261 up. I was talking to Bob Nash, and he told me that
1262 once Bruce had asked him to go to Perry County and
1263 pick up some get out the vote cash for him. That's
1264 all I know about that.

1265 Q That's all he said. Did he say whether

1266 Mr. - did Mr. Nash indicate he had been asked about

1211 this by the FBI?

1212 A No.

1213 Q Did you report what Mr. Nash said to

1214 Mr. Lindsey?

1215 A No.

1216 Q You had no other conversation with

1217 Mr. Lindsey about picking up cash from the Perry
1218 County Bank in connection with the '90 campaign?

1219 A That's all I remember.

1220 Q You don't remember any conversation with

1221 anyone else about picking up conversation from the
1222 Perry County Bank?

Page 322

1223 A Not so far. I'm doing my best.

1224 MR. COHEN: She went from remembering no
1225 conversations to three conversations.

1226 MR. COLE: It is skillful examination by

1227 Mr. Giuffrè.

1228 MR. GIUFFRÀ: Thanks. I appreciate that.

1229 MR. COHEN: I think the record was it was
1230 Ms. Wright who remembered the conversations, took

1231 a
1232 break and then disgorged them.

1233 BY MR. GIUFFRÀ:

1234 Q Why did your role change between the '88
1235 campaign and the '90 campaign? Or was it the '86
1236 campaign?

1237 A Why did my role change?

1238 Q Because you became the state party
1239 chairman? Why weren't you as actively involved in
1240 the campaign of '90 as opposed to prior years?

1241 A I didn't manage the '90 campaign, and I had
1242 managed the prior years.

1243 Q Again, you have no - in terms of the way
1244 that those withdrawals were done for the get out the
1245 vote drives, you don't have any sense as to how it

Page 323

1246 could have been done differently?

1247 A I don't know how they did it.

1248 Q Did Mr. Nash indicate to you what use was
1249 made of the money?

1250 A No.

1251 Q Do you have any idea as to what use was
1252 made of the money?

1253 A No. I didn't have any further discussion
1254 with him.

1255 Q Last question. Why did your role - why
1256 were you no longer the Governor's campaign manager?

1257 A Well, I left the Governor's staff toward
1258 the end of 1989, though I didn't technically go off
1259 the payroll until January of '90. So I was no longer
1260 working for him, and I didn't want to run the
1261 campaign in '90.

1262 Q Who became the campaign manager?

1263 A Gloria Cabe.

1264 Q C-a-b-e?

1265 A C-a-b-e.

1266 Q Have you ever spoken to Ms. Cabe about the
1267 withdrawal of cash from the Perry County Bank?

MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

MADISON GUARANTY

CASHIER'S CHECK

① 2496

APRIL 4,

1985

PAY TO THE ORDER OF BILL CLINTON CAMPAIGN FUND

\$ 3,000.00

THE SUM 3000 DOLS 00 CTS

DOLLARS

Doris J. Young

0000300000

MADISON GUARANTY SAVINGS & LOAN ASSOCIATION MADISON GUARANTY SAVINGS & LOAN ASSOCIATION 100 South Adams Street, Madison, WI 53701 (608) 255-1111		CASHIER'S CHECK # 2497
DATE: April 4, 1985		\$2,000.00
PAY TO THE ORDER OF Bill Clinton		DOLLARS
THE SUM 3000 DOLS 00 CTS		DOLLARS
SIGNED: Susan Anderson		0000300000
002497 1282074216 7 001-117		0000300000

MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

MADISON GUARANTY

CASHIER'S CHECK

o 2498

April 4, 1965

PAY TO THE

ORDER OF

THE SUM 3000 DOLLARS

DOLLARS

Six Thousand

002498 02820742361 7 001-312

TO: 39
 FROM: NR
 RE: RD Randolph's Visit

DATE: 4/11

- () Immediate action
 () Draft reply for Governor
 () Reply or act in 1 week
 () Prepare report
 () For comment

- () No action required
 () Please see me
 () File
 () For your information

ARKS:

Mr. Randolph dropped by to see you this morning to talk to you about the Water Bill you vetoed. He said that he talked to you on Sunday morning. He wants to know if the veto is going to stand. He would like you to call Jim Guy Tucker about this. He said that he has a difficult time getting an answer from you. (He mentioned a meeting between you, Tucker and Jim McDougal a couple of years ago which involved \$33,000. This was pretty cryptic.) He seemed angry. Someone I think he prefers you, needs to call Tucker.

cc SB 4/15

see Jan-
 circ him

DKSN018008

17

BSA

Depo of: Betsey Wright In Re: Whitewater January 26, 1996 cr:63422.0

XMA001.1

101 Mrs. Clinton about David Hale?

102 MR. COHEN: Is there anything else other
103 than what you said?

104 THE WITNESS: That's it.

105 BY MR. GIUFFRA:

106 Q Where were you at the time of this phone
107 call?

108 A At my house.

109 Q In Washington, D.C.?

110 A Uh-huh, yes.

111 Q Do you recall any other discussions since

112 January 20, 1993 with President Clinton about

113 Whitewater/Madison-related matters?

114 A I had one conversation with him on a topic

115 which probably has nothing to do with a strict

116 definition of Whitewater-Madison-related matters.

117 though it is synonymous in my mind, and that is how

Page 153

118 on earth was I going to pay for the legal bills
119 associated with this.

120 Q Any other conversations that you can
121 recall?

122 A That's the only one I can recall.

123 MR. COLE: Before we leave this

124 conversation regarding David Hale -

125 MR. GIUFFRA: I know what you want to ask.

126 That's what I'm going to get into.

127 BY MR. GIUFFRA:

128 Q What did President Clinton say to you about

129 Mr. Hale's allegations?

130 MR. COLE: You are on the right track.

131 THE WITNESS: We couldn't figure out what

132 he was talking about.

133 BY MR. GIUFFRA:

134 Q Did the President indicate he believed

135 these allegations were false?

136 A We knew they were false. We all knew they

137 were false. We couldn't figure out what he was

138 hanging it on though.

139 Q Did the President ever indicate to you that

Page 154

140 he had ever met Jim McDougal and David Hale on any
141 occasion together?

142 A No. He asked me whether I could remember
143 if he had ever met with them.

144 Q Did the President indicate to you whether

145 he had ever met with David Hale?

146 A Did I know whether he ever had?

147 Q Did he indicate to you whether he had ever

148 met with him?

149 A He clearly couldn't remember any such

150 meeting.

151 Q He couldn't remember anything about any
152 contacts he might have had with David Hale; correct?

153 A Other than the informal running-into-him

154 context.

155 Q Is the President somebody who has a good

156 memory?

157 A Yes.

119 Q Are you someone who has a good memory?

120 A On some things, not on numbers. Anything
121 that has numbers I don't remember.

122 Q Is Mrs. Clinton someone who has a good

Page 155

123 memory?

124 A I don't know.

125 Q Do you recall anything more about your

126 conversation with the President and Mrs. Clinton

127 about David Hale, just anything?

128 A That's it. We were just in total

129 perplexity about what on earth this guy was talking

130 about.

131 Q And you knew that the allegations related

132 to a \$300,000 loan that had been made to an entity

133 that was controlled by Susan McDougal; is that right?

134 A Actually, I don't think we knew that much

135 about it at that point. But it was some loan that he

136 thought Bill - he was claiming Bill got him to make

137 or something like that.

138 Q When did you first learn of an

139 investigation of Mr. Hale, if you know?

140 A I would only have learned of it from the

141 press.

142 Q Did there come a time when you learned that

143 the RTC was investigating Madison?

144 MR. COLE: That's a very difficult question

Page 156

145 if you don't distinguish between RTC regular

146 examinations which they do of all savings and loans

147 or are you talking in terms of civil liability?

148 BY MR. GIUFFRA:

149 Q Do you recall any investigations by the RTC

150 with regard to Madison relating to civil or criminal

151 liability?

152 MR. COHEN: Are we talking about Jay

153 Stephens?

154 MR. GIUFFRA: Let's go back.

155 MR. COHEN: Is this the RTC referral

156 issue?

157 MR. GIUFFRA: Yes.

158 MR. COHEN: Let's tag the issue so we

159 know.

160 BY MR. GIUFFRA:

161 Q Did there come a time when you learned of

162 an investigation by the RTC that ultimately led to

163 certain criminal referrals being made to the

164 Department of Justice?

165 A Yes.

166 Q When did you learn of this investigation?

Page 157

167 RTC investigation?

168 A Well, the first time I heard about it was

169 in the fall of 1992, and at that point I regarded

170 it - there was no way to verify it. So, I didn't

171 know whether it was true or not. I now know that it

172 was.

173 But in about September or October of '92.

174 some RTC official at a cocktail party in Kansas City

B5A

Depo of: Betsey Wright In Re: Whitewater January 26, 1996 cr:63422.0

AMANI 32 32

109 told somebody who supported Bill Clinton from
 110 California who was visiting in town that they had
 111 just sent a criminal referral up to the prosecutor in
 112 Little Rock. And that is all I was given over the
 113 phone. I went scrambling trying to find out what on
 114 earth they were talking about.

115 Q Who was the person that contacted you?
 116 A A friend of this person from California who
 117 was at the cocktail party with somebody from the
 118 RTC.

119 Q Who was the person that contacted you? The
 120 name?

121 A I don't remember the name.

122 Q So, there was a person from California who

Page 158

111 called you, correct?

112 A A friend of a person from California.

113 Q A friend of a person from California.

114 Where does the friend reside?

115 A I think in California.

116 Q So a friend of a person you knew in

117 California called you -

118 A I didn't know them. I was fairly high
 119 visibility as somebody who was dealing with Bill
 120 Clinton's person and personal defense. So, I didn't
 121 necessarily have to know them.

122 Q They called you, and this person, was it
 123 the friend of the person you knew who was at the
 124 cocktail party in Kansas City? I'm getting
 125 confused

126 A The person at the cocktail party did not
 127 call me.

128 Q The cocktail party was in Kansas City?

129 A Correct.

130 Q And at the cocktail party some RTC official
 131 said there had been criminal referrals made or a
 132 criminal referral -

Page 159

111 A Involving the Clintons.

112 Q This person in Kansas City, was that the
 113 same person who was in California or was it a
 114 different person?

115 A This is much ado about nothing, since the
 116 referral never came to light. But the first time I
 117 ever heard of a criminal referral regarding Madison
 118 Guaranty was when I received a call from a guy in
 119 California. He had been told by another person in
 120 California that this other person in California had
 121 returned from Kansas City on some business where
 122 he

123 had attended a cocktail party where a person from
 124 RTC

125 had told him that there had just been a criminal
 126 referral regarding a savings and loan official in
 127 Arkansas and it involved the Clintons. That's the
 128 totality of what I was told.

129 Q This phone call occurred before the
 130 election?

131 A Absolutely.

120 Q So, it was a September-October phone call?

121 A Correct.

122 Q You were in the campaign headquarters when

Page 160

111 you got the call

112 A Correct.

113 Q Who did you advise of this phone call at
 114 the campaign?

115 A Probably nobody.

116 Q You never spoke to Mr. Lindsey about the
 117 fact that there might be this criminal referral
 118 naming the Clintons as witnesses?

119 A I don't know why I would have.

120 Q Did you -

121 MR. COHEN: You understood it because you
 122 sort of stopped the question: the naming them as
 123 witnesses didn't come from her.

124 MR. GIUFFRA: Just mentioning the
 125 Clintons.

126 BY MR. GIUFFRA:

127 Q Did you speak to anyone, anyone in the
 128 campaign, outside the campaign, anyone, about this
 129 telephone call you had received regarding an RTC
 130 criminal referral mentioning the Clintons?

131 A I called a friend who was a criminal
 132 defense attorney.

Page 161

111 Q Who was that?

112 A And I asked him -

113 Q Who was that friend?

114 A Let me finish. I asked him whether there
 115 was any way to find out whether there was any grand
 116 jury consideration of anything that we could know,
 117 and he told me no, because those things would always
 118 be in secret. So there really wasn't any way for me
 119 to find out if there was anything there or not.

120 His name was Bill Wilson. He was an
 121 attorney in Little Rock.

122 Q Was Bill Wilson involved in your efforts in
 123 terms of defense work?

124 A No. I think that is the only time I ever
 125 talked to him.

126 Q Who is Bill Wilson?

127 A He was a criminal defense attorney in
 128 Little Rock at that time.

129 Q Now he is a federal judge?

130 A Correct.

131 Q He was a law partner at the Wright, Lindsey
 132 firm with Mr. Engstrom?

Page 162

111 A No. Mr. Engstrom is not at Wright,
 112 Lindsey.

113 Q Is that where Mr. Wilson was?

114 A At Wilson, Engstrom, whatever it was. He
 115 has now left that firm. It is a different name.

116 Q Did you regularly speak to - strike that.
 117 Did you speak with Mr. Wilson about defense
 118 matters during the campaign?

119 A No, I didn't. Fortunately I didn't know a

BSA

Depo of: Betsey Wright In Re: Whitewater January 26, 1996 cr: 63422.0

NMN/3/13

110 whole lot of criminal defense lawyers. I knew
 111 Mr. Wilson represented Roger Clinton. Therefore I
 112 knew he was someone who practiced criminal defense
 113 work in federal courts. So I just called to say is
 114 there a way to know, is there a public record on
 115 this. The answer was no, there isn't, and that was
 116 it.
 117 Q Did you speak to anyone else other than
 118 Mr. Wilson about the allegation of an RTC -
 119 A Not that I can remember.
 120 Q Have you ever spoken -
 121 A To tell you the truth, the words "RTC"
 122 weren't mentioned. The person was RTC, but I didn't

Page 163

111 make the connection that it was an RTC referral at
 112 that time.
 113 Q You had no other conversation with anyone
 114 else about - strike that.
 115 Did there come a time when you discussed
 116 the fact that this communication from California with
 117 regard to criminal referrals regarding the Clintons
 118 and an S&L person with anyone other than Mr. Wilson?
 119 You clarified that contact. Was there anyone else?
 120 A I don't think I did. I can't recall doing
 121 so. Usually when I couldn't verify things I didn't
 122 proceed on them. I did think that it was highly
 123 improper for an official to be talking about a
 124 criminal referral at a cocktail party. With that in
 125 mind, I did once mention it to Mr. Kendall after he
 126 had been hired. But it was so cold and so long ago
 127 that it was gone.
 128 Q Did you ask Mr. Wilson to take any actions
 129 with regard to the criminal referral?
 130 A No. I asked him whether there was a way to
 131 find out about it.
 132 Q Do you know whether Mr. Wilson contacted

Page 164

111 anyone with regard to this?
 112 A He said there wasn't any way to know
 113 anything about it.
 114 Q Other than this communication with the
 115 person from California about a criminal referral
 116 during the campaign, did you have any other
 117 communication with anyone about criminal referrals?
 118 A I remembered I asked Hillary if she was
 119 aware of any friend of theirs who was in a savings
 120 and loan business who might be under criminal
 121 investigation, and we couldn't think of anybody.
 122 Q This was a conversation you had with
 123 Mrs. Clinton during the '92 campaign? Was it - the
 124 same time you spoke to Mr. Wilson you spoke to
 125 Mrs. Clinton, correct?
 126 A I mean, it wasn't at the same time, but it
 127 was in that time period.
 128 Q Prior to the election? Prior to the '92
 129 election?
 130 A Yes.
 131 Q Did you speak to anyone else?
 132 A I don't remember anybody else. This is not

Page 165

111 anything I have thought about for a long time,
 112 frankly.
 113 Q Do you think you spoke to Ms. Lynch about
 114 it, about the criminal referral?
 115 A I don't remember doing so.
 116 Q Did you have staff meetings with the other
 117 members of your defense group during the campaign in
 118 which you would discuss -
 119 A More team meetings.
 120 Q Did you have team meetings to discuss the
 121 allegations that were being made?
 122 A Yes.
 123 Q You don't recall raising this issue of the
 124 criminal referral at the team meeting?
 125 A I don't remember doing so. I didn't have
 126 enough to go on. It is only in hindsight that I
 127 realized the real significance of it.
 128 Q Do you know Paula Casey?
 129 A I do.
 130 Q How do you know Paula Casey?
 131 A Democratic party activities.
 132 Q In Arkansas?

Page 166

111 A Correct.
 112 Q What do you know about the appointment of
 113 Paula Casey?
 114 A I'm sorry?
 115 Q What do you know about the appointment of
 116 Paula Casey as U.S. Attorney?
 117 A Nothing.
 118 Q Did you have any role in the appointment of
 119 her?
 120 A None.
 121 MR. COLE: Do you know whether Governor
 122 Clinton had any role in the appointment of Paula
 123 Casey as U.S. Attorney?
 124 THE WITNESS: Does the President do the
 125 appointment?
 126 MR. COLE: Other than the obvious.
 127 THE WITNESS: My assumption was that since
 128 she had worked for Senator Bumpers that it was a
 129 courtesy appointment for Senator Bumpers. That was
 130 my assumption. While we had known Paula, she had
 131 never been that closely involved with the Clintons on
 132 their campaigns.

Page 167

111 BY MR. GIUFFRÀ:
 112 Q Do you know Brent Bumpers?
 113 A I have met him, and he makes very good
 114 cookies. Have you had them, the Brent and Sami
 115 cookies?
 116 Q Have you ever spoken to anyone -
 117 A It is his business. That's mainly how I
 118 know him.
 119 Q Have you ever spoken to Mr. Bumpers about
 120 anything having to do with Whitewater or Madison or
 121 David Hale, Brent Bumpers?
 122 A No.

Presentation to the

STATE OF ARKANSAS



Regarding
Financing Structures
and
Investment Banking Services

January 10, 1985

E. F. Hutton & Company Inc.

Lasater & Company

DKSN027487

-----TABLE OF CONTENTS-----

SECTION 1.	E.F. HUTTON PUBLIC FINANCE GROUP	--
SECTION 2.	MARKETING AND DISTRIBUTION STRENGTH	
SECTION 3.	E.F. HUTTON INDEMNITY COMPANY	--
SECTION 4.	<u>HOUSING FINANCING</u>	
SECTION 5.	POLICE COMMUNICATION FINANCING	
SECTION 6.	<u>CORRECTIONAL FACILITIES FINANCING</u>	
SECTION 7.	E.F. HUTTON CREDIT / PATROL CAR FINANCING	--
SECTION 8.	HEALTH CARE FINANCING	
SECTION 9.	STATE ASSISTANCE FOR WATER AND SEWER FINANCING	--
SECTION 10.	<u>APPENDIX A: E.F. HUTTON'S ARKANSAS FINANCINGS</u>	
	<u>APPENDIX B: INNOVATIVE ALTERNATIVES TO TRADITIONAL</u>	
	<u>JAIL FINANCING</u>	
	<u>APPENDIX C: TAX-EXEMPT TELECOMMUNICATIONS LEASE FINANCING</u>	

DKSN027490

SECTION 3. POLICE COMMUNICATION SYSTEM FINANCING

Set forth below are some of the alternatives which the Arkansas State Police Commission may utilize in acquiring the proposed communications systems. The information which follows is intended to provide you with a summary of the items which our firm and the firm of Lasater and Company believe to be attractive alternatives for the Police Commission communication equipment financing.

FINANCING STRUCTURE

From our review of the needs of the Commission, it is fairly clear that there are two basic structures which the financing of the acquisition of the communications system can take. The first of these structures would involve the issuance of long term fixed rate tax-exempt bonds. The second structure involves the issuance of tax-exempt Certificates of Participation in a lease. Each of these structures is more fully described below:

TRADITIONAL BOND STRUCTURE

The issuance of long term fixed rate bonds is an alternative which the State Police Commission can probably accomplish without significant changes in legislation or procedures. Basically, the Commission would issue bonds through an appropriate state agency, the "Issuer". The proceeds of the bonds, would be used to purchase the communications system from the chosen vendor. The Commission through the appropriate issuer of the bonds would agree to make payment sufficient to pay the principal of and interest on the bonds. The bondholders would have a lien on the communications equipment and the revenues pledged to the bond issue. While we have not had our legal review of this alternative, it does appear that there is sufficient legal precedence to allow this transaction to be treated as a traditional revenue bond financing and therefore comply with the constitutional, legislative, and judicial requirements for non G.O. bond financing within the State of Arkansas. Such a financing will most probably require the use of some form of supplemental security such as bond insurance or letters of credit in order to make the bonds more attractive to the investing public.

CERTIFICATES OF PARTICIPATION

A second and perhaps more attractive means of financing the system would be to utilize the sale of Certificates of Participation in a lease. This type of transaction is very similar in form to a traditional bond financing. However, there may be a substantial and a significant difference in the legal interpretation of a "lease" subject to appropriation. Basically, the Certificate of Participation transaction (hereinafter "COP") would work as follows: The State Police Commission would find the appropriate issuer of COP's (the "issuer"). The certificates once structured would be sold either through private placement or to the public. The proceeds of the sale of the certificates would be utilized to purchase the communication system and the State Police Commission would enter into an agreement through the issuer of the certificates to pay to the certificate holders an amount necessary to meet principal and interest payments on the certificates.

DKSN027531

As you can see, this is very similar to the above traditional financing. The major difference, however, is that unlike a traditional bond issue in which the revenue source must be identified, dedicated, and pledged for the entire life-of the transaction, a COP transaction is done subject to annual or biannual appropriations. We believe that such a transaction more closely accomplishes the goals and desires and the standards and procedures of fiscal officers throughout the State of Arkansas. However, because a COP transaction is subject to annual appropriations, the safeguards necessary for protecting the certificate holders are somewhat more stringent. For example, there is included in the transaction a covenant that the commission will not replace the leased equipment and that the commission will not use the equipment during the term of the lease-if appropriations-for-the-payments-under the lease are not made. Moreover, because of the uncertainty, however small, with respect to annual appropriation, it is often necessary to obtain some form of supplemental security such as a letter of credit or bond insurance if the certificates are sold to the public.

FINANCING ALTERNATIVES

Regardless of which basic financing structure is chosen, there are several innovative bond techniques which we would recommend that the Police Commission review and utilize. Each of these items listed below is designed to provide the State Police Commission with increased flexibility and lower financing costs. The use of innovative financing techniques implies a commitment on the part of investment bankers to obtaining a reduction in borrowing cost on their clients' behalf.

Described below are several ideas which we believe the State Police Commission can use to significantly reduce its costs.

ANNUAL TENDER (PUT) OPTION BONDS

The benefit to the State Police Commission in implementing this structure would be substantial. A bond issue including put bonds will result in interest cost savings of approximately 25 to 35 basis points, a larger potential arbitrage amount, a significantly lower gross spread, and consequently, a lower financing rate. This type of bond is discussed at greater length in the preceding section entitled "Housing Finance."

CAPITAL APPRECIATION BONDS (CABS)

The Arkansas Housing Development Agency has successfully used this financing technique in several series of its Mortgage Revenue Bond issues. The concept has allowed AHDA to lower the True Interest Cost (TIC) of its financings and to include only the initial offering price of the bonds (not the final maturity value) toward its bond allocation for the year.

When this concept was first introduced to the municipal marketplace in 1981, CABS sold at yields significantly below those of comparably rated and maturing interest bearing bonds. This trend has been largely reversed during the past several years, due primarily to insufficient call protection provided to holders of CABS. At the time of marketing the issue, it is necessary to reassess whether interest cost savings will be achieved with CABS.

DKSN027532

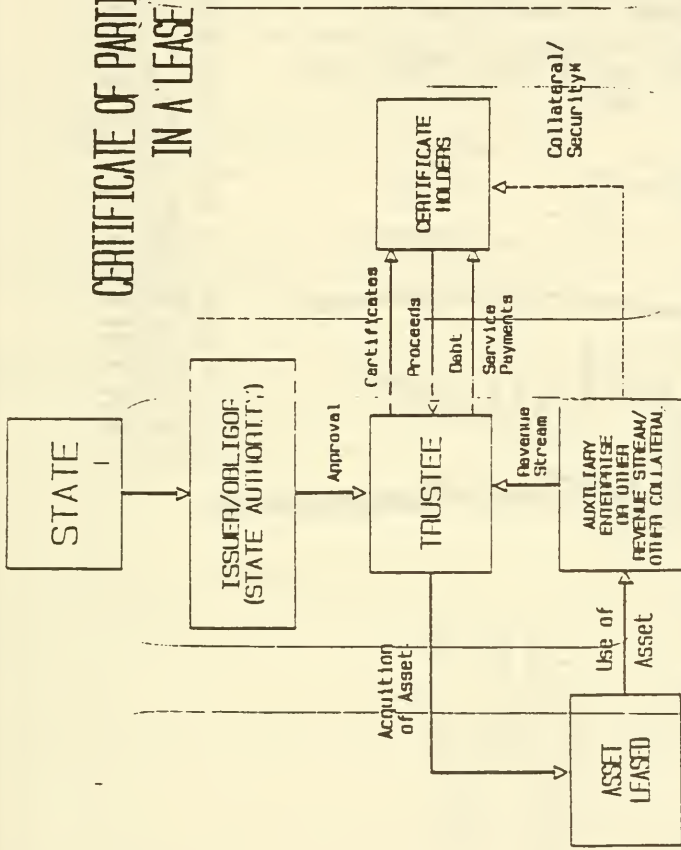
LONG-TERM FLOATING RATE MONTHLY DEMAND BONDS
THE "LOWER FLOATER"

The long-term floating rate monthly demand bonds, another E.E. Hutton innovation, also achieves substantial interest cost savings. There is a full discussion of this very attractive alternative in the "Housing Finance" section of this presentation.

Additional information on communication financing can be found in the booklet entitled "Tax-Exempt Telecommunications Lease Financing" in Appendix C of Section 1C.

DKSN027533

CERTIFICATE OF PARTICIPATION IN A LEASE



Note: At end of lease term
asset belongs to lessee

*Can be revenue stream, letter of credit, insurance, etc.

DK SN027534

~~10/10/10~~ 10/10/10

not the time
to go this far —

~~out of~~ B.

We have
Done

Leister & Company
TYPE SETTING
117 Louisiana Street • Little Rock, Arkansas 72201

The Honorable
Bill Clinton
Governor
State Capitol
Little Rock, Arkansas

DKSN027572

Lasater & Company

INVESTMENT BANKERS

February 13, 1968

The Honorable
Bill Clinton
Governor
State Capitol
Little Rock, AR 72201

Dear Governor:

Thank you very much for the opportunity to sit down and visit with you regarding the many issues facing Arkansas and relative to areas in which Lasater & Company can assist you in your efforts to promote and develop Arkansas.

In order to maximize our relationship, I believe that it is essential that we take some positive steps to set up specific lines of communication to enable both our understanding and to make sure that those lines are kept open and functioning.

To begin, let me suggest that Lasater & Company be advised of all financing proposals affecting the state of Arkansas and suggest that your contact person in our company on extremely urgent is the Controller, Michael Drake and Dan Muddy.

Secondly, we have discussed the appointment of Donnie Spears to the Arkansas Housing Board and I have confirmed our understanding regarding the appointment in my letter of January 23, 1968, and I want to again reaffirm our interest and desire in seeing Mr. Spears in this position.

Next, let me suggest that we believe it would be in your best interest to send a representative of your staff to each Arkansas Housing and Development study meeting which usually precedes the regular meeting of the agency. Normally, the study meeting occurs on the third Wednesday of each month.

Fourth, we would recommend to you that competitive proposals be required on the up-coming ARDA FHA/VA financing to permit Hutton to submit a proposal. It is important for us to know that because we have made commitments to Hutton and unless competitive proposals are accepted, it would leave us, Lasater & Company, in an untenable position.

DKSN027573

312 Louisiana Street • Little Rock, Arkansas 72201 • 501/376-0060
Nations: Ws. 1-800-043-6072 • Arkansas Ws. 1-800-481-8490

#1 Corporate Plaza, Pensacola D • 110 E. Broward Blvd. • Ft. Lauderdale, Florida 33301 • 305/467-1088
Nations: Ws. 1-800-317-0211 • Florida Ws. 1-800-431-9711

NASD Member Firm Member Securities Investor Protection Corporation

Governor Clinton
 February 11, 1981
 Page 2

Dan Moody, who is very familiar with state government and who serves on the Constitutional Convention is a lobbyist and he is available on strategy or any other matters in which you believe his input would be effective. Let me encourage you to call on Dan; his experience and knowledge is valuable.

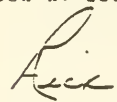
In addition, we would be more comfortable if you would take the opportunity or ask someone on your staff to take the opportunity to appraise me or my staff of any actions by you or your staff prior to any public announcements so that we will not be surprised or in some instances embarrassed because of the announcement.

Finally, I believe it would serve us both well to have regular monthly meetings between the two of us to discuss the affairs of the economy on Arkansas. Bill, I do not ask for this to have undue influence or to try to apply undue pressure to you or your Administration but because of my background in business I believe ~~that I can make a positive contribution to you~~ in your efforts to promote a better climate in the state of Arkansas.

Again, thank you for the opportunity to sit down and discuss with you these points and I hope you will act favorably on my suggestion for a regular meeting.

Sincerely,


 Dan H. Casater


 Buck L. Knox
 President

DKSN027574

MEMORANDUM

TO: BETSEY WRIGHT
 FROM: MIKE GAINES
 DATE: MAY 13, 1985
 SUBJECT: ASP COMMUNICATIONS SYSTEM

The financing K will be discussed by the Communications Sub-committee tomorrow and by Legislative Council on Friday.

The Capital Resources group, which did not get the ASP Commission's nod, intend to contest the award to Rutton, Lasater, Roney on the following points:

1. Capital offered a fixed rate rather than a floating rate, and
2. Capital's proposal was based on monthly payments by the state to repay the debt while R,L,R based their proposal on payments every 6 months.

Capital points out that the legislation (written by R,L,R) requires monthly payments (Att 317 attached, see highlights on page 5).

A proposal based on 6 month payments can be lower because it allows the state to earn interest on the pledged revenues during that 6 month period. Capital argues that this is not allowed under the law as written.

I have discussed this with Sam, and he is looking into it.

MCJ:je

DKSN018184

OFFICE OF THE GOVERNOR



MEMORANDUM

To: Governor Clinton / Betsy Wright Date: 5/1/85
 From: Mike Pancer (1) Leaster should be told
 bid must be price
 Subject: ASP Communications K (2) Keele's letter indicates
which helps the State to know
this equipment for cheaper
equipment - but cost

The State Police Commission is meeting Friday to review proposals for financing the communications system. The following are Tommy Goodwin's observations of where things stand:

Will Simpson - appears to have contacted his agent from another vendor to Dan Leaster.

Johnny Mitcham - solidly behind Leaster.

Tennison - Leaster

Machlenn - probably Leaster, since McElroy back did not submit proposal

Gene Raff - probably Leaster

Rockefeller - ?

DKSN027162

Joe - we have real problem -
 have in "street talk" that
 Leaster put in unsoundly low
 bid knowing he can raise it once he
 gets it. A Page ASG has indicated
 something about the cost of the system.

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR

ROUTE SLIP

5/2/85

Dr. R. S. / C

NASH

For example,

For Signature:

For Supply:

2-000000 100000

For Your Information

For example, to find

1999-2000

Notes and References

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2818

• **Supervisors:**

Remarks:

Dan Lasater gave me
this letter when I met
with him on Wed. for
lunch.

Bill is NOT my kind of person. HAS ALWAYS caused the Agency (AHDA) Problems.

DKSN026484



MORTGAGE BANKERS ASSOCIATION OF ARKANSAS

Dennis Mills, President
Terry Kent, Vice President

Larry Bates, Secretary
Gene Holman, Treasurer

April 10, 1985

Maurice Smith
Chief of Staff
Governor's Office
State Capitol
Little Rock, Arkansas

I would like to recommend that James T. Bell be appointed to the Arkansas Development Finance Agency Board.

Mr. Bell has been in the mortgage banking business in Arkansas for sixteen years. He is a past President of the Mortgage Banker's Association of Arkansas. In addition, he has been involved in bond issue financing more than any one lender in the State. His knowledge of bond financing as relates to real estate would be of great assistance to your new board.

Sincerely,

Dennis Mills
President

DM/hs

DKSN026485

PA020205
DATE 01/24/86

CURRENT MEMBERS OF BOARD NUMBER 053
ARKANSAS DEVELOPMENT FINANCE AUTHORITY

R0596
PAGE 110 53

AUTHORITY
AGI 1062 OF 1985

MEMBERS 11
TERM 4 YEARS

BASIS OF REPRESENTATION

TRAVEL

MEMBERS OF THE BOARD OF DIRECTORS OF THE AGENCY SHALL SERVE WITHOUT COMPENSATION, BUT THE AGENCY MAY REIMBURSE ITS BOARD MEMBERS FOR ACTUAL EXPENSES NECESSARILY INCURRED IN THE DISCHARGE OF THEIR OFFICIAL DUTIES.

401
402
403
404

POS NO	NAME	COMM DATE	QUALIFY DATE	EXP DATE	CONFIRM DATE	APR BY	CH STATUS	DIST EX OFF
1	BRIANNA JAMES 531 WASHINGTON ST	06-27-85	07-01-85 71701 OUACHITA	01-14-87	836-5741	BC	4	4
2	DAVENPORT MARGARET 203 CAMBRIDGE PL	07-10-85	07-10-85 72207 PULASKI	01-14-88	372-4700	BC	6	2
3	FULLER DON RT 1 BOX 270	06-28-85	06-28-85 72021 MONROE	01-14-89	734-3121	BC	4	1
4	GLASS DAVID 1511 NE 10TH	07-05-85	07-10-85 72712 BENTON	01-14-89	273-4244	BC	4	3
5	PETERSON MERLE PO BOX 66	06-27-85	06-27-85 71639 DESHA	01-14-87	382-2144	BC	4	4
6	PIERCE BILL 2310 S RINGO	07-01-85	07-01-85 72206 PULASKI	01-14-88	376-0703	BC	5	2
7	STEPHENS BOBBY 3700 FREE FERRY RD	06-27-85	07-05-85 72904 SEBASTIAN	01-14-89	782-8601	BC	4	3
8	WIECHERN HOWARD 19 SOUTHERN PINES	07-10-85	07-10-85 71601 JEFFERSON	01-14-88	10-27-83 BC 535-2013	BC	4	4
9	WILLMUTH PAUL 3352 AMY	DATESVILLE	72501	01-14-90 INDEPENDENCE	793-9871	BC	4	1

DKSN026450

HOT SPRINGS (Garland)
The Sentinel Record

DKSN017642

FEB. 28 1985

Governor's brother testifies at Spa attorney's drug trial



Clardy

By JERRY MITCHELL
A-R Staff Writer

Roger Clinton, 28, the brother of Gov. Bill Clinton, testified Monday in U.S. District Court that "my life and my family's life was in considerable jeopardy" due to his cocaine debts.

Roger Clinton told his best friend, Dan Lasater, a Florida businessman and racehorse owner, about his drug debts, and Lasater loaned him \$8,000, Clinton testified during the trial of Sam Anderson Jr., 28, of Hot Springs, a local attorney charged with cocaine distribution. U.S. District Judge Oren Harris is presiding.

Clinton said at first he tried to protect Anderson when investigators told him he would be arrested during the summer of 1984.

U.S. Attorney Ann Hutchinson asked Clinton why he is testifying now.

"My life was slipping away from me, ..." he replied. "I thought I had a friend in Sam."

Clinton then broke into tears: "I want to be honest with myself. This is a very good step in that direction It's a step to

have my life. I'm here to tell the truth."

Clinton told the jury he sold cocaine to Anderson on several occasions between November 1983 and February 1984.

Clinton said he and Anderson used cocaine extensively and that Anderson used approximately 75 percent of what he bought for them.

Anderson is accused of purchasing cocaine from Clinton, chasing cocaine from Clinton and Maurice Rodriguez, 20, of New York City.

Clinton and Rodriguez pleaded guilty to conspiracy to distribute cocaine charges.



Myers

Clinton also pleaded guilty to one count of distributing cocaine.

He received a two-year prison sentence, and Rodriguez received three years.

Clinton also received a three-year suspended sentence.

Clinton said Monday he was slipping into debt with Rodriguez and "this was causing friction."

Clinton then arranged to buy 10 to 15 ounces of cocaine for him and Anderson from Rodriguez, with the majority of the cocaine to go to Anderson, Clinton said.

Clinton said he picked up 9 ounces of cocaine from Rodriguez and after going into a Hot Springs club for a short time he returned to his party and the roof crashed and the cocaine stolen from the party.

Clinton said he became frightened because he did not have the money to pay Rodriguez.

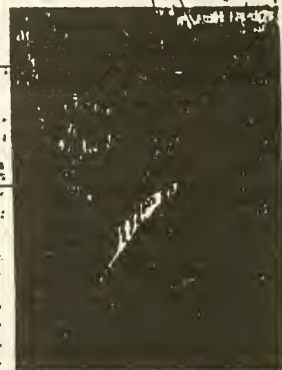
After borrowing the money from Lasater, Clinton told he paid Rodriguez \$4,000. The rest of the money went to pay other debts, he said.

Under questioning by Floyd Clardy, a Bryant attorney representing Anderson, Clinton said he used cocaine in the back of a Volkswagen, Reg. 13, after he had already pleaded guilty to cocaine charges — something he said when sentenced Jan. 28.

When asked by Clardy why he did not tell the truth about a cocaine transaction which Clinton told the grand jury involved Anderson and took place June 27, 1984, he replied that he was in a "state of shock."

The government dropped the charge of distributing cocaine after Clardy filed an alibi which showed Anderson was in Fort Worth June 27.

See TRIAL on Page 6



Clinton

TRIAL con 4...

DKSN017(4)

"How about today?" Clardy asked. "Are you still in a state of shock?"

"Quite frankly I am," Clinton replied.

Clinton said he sold cocaine to government informant Rodney Meyers on three occasions for three grams, with prices between \$100 and \$150 per gram.

Clinton said he bought the co-

caine on June 20, 1984, for Meyers from Anderson.

Clinton said he took as a joke Meyers offer to sell him up selling condominiums.

Clardy asked if Meyers had sought his aid for obtaining the governor's help in lifting a building ban.

Mark Webb, of the U.S. Attorney's office, objected to the tes-

timony as irrelevant.

Harris sustained the objection.

Meyers testified that he bought cocaine from Clinton on June 20 and that Clinton told him the cocaine was from Anderson.

Meyers said he received a \$200 check for airfare from the government and a \$200 check for attending the trial. "I was not a paid informant."

In his opening statement, Hutchinson told the jury that "we will see what life on the fast track in Hot Springs, Ark., in 1983 and 1984 was like ... Every fast track has its end and this one has an end in this courtroom."

Clardy said in his opening statement that Anderson has used cocaine but has been not been charged with that.

Clardy spent most of his time attacking the credibility of Clinton as a witness and argued that Clinton decided to use Anderson as a "scapegoat."

A nine-woman, three-man jury was selected by noon Monday, and one man and one woman were selected as alternates. The trial is expected to last several days, possibly a week.

Clardy filed a motion Monday requesting a determination of whose fingerprints were found on a bag of cocaine sold to Meyers June 20. The government said in a motion Friday that the fingerprints were not Anderson's.

Clardy said in court Monday he will call the lab technician who examined the bag to determine whose fingerprints they are.

Clardy also requested permission to play videotaped conversations between Clinton, Meyers and others and included numerous pages of transcript from those conversations in the court record.

The trial will resume at 8:30 a.m. today in federal court.

Rodriguez may testify for the prosecution during today's proceedings.



Anderson and his wife, Debbie, leave the federal building during a recess. (Photo by David Vann)

Lassiter / ADEA

319

- # Buddy Yang - Mike Gould

- 2 more dead

- LAT story - Lassiter - 1

circumstances - state police
in 1985 - 100 for radios

in 1985 - in 85 or 86 - new -
high level - \$20 mill.

state police
\$ 20 mill.

- LD Brown - used to be

in GARC security

- concerned re: what

he used to be -

DKSN017322

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

TUESDAY, APRIL 30, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

At this time I am going to ask our witnesses, Mr. Mitchum, Mr. Goodwin, Mr. Myers, and Mr. Young, if they would all rise for the purpose of taking the oath.

[Whereupon, Johnny B. Mitchum, Former Commissioner, Arkansas State Police; Thomas L. Goodwin, Former Director, Arkansas State Police; John W. Myers, Investment Adviser & Actuary; Paul B. Young, Jr.; Vice President, Public Finance Department, T.J. Raney & Sons; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. I would ask if any of the witnesses have any statements that they would like to make before we start, we would be pleased to receive them?

Mr. Mitchum.

**SWORN TESTIMONY OF JOHNNY B. MITCHUM
FORMER COMMISSIONER, ARKANSAS STATE POLICE**

Mr. MITCHUM. Nothing.

The CHAIRMAN. Mr. Goodwin.

**SWORN TESTIMONY OF THOMAS L. GOODWIN
FORMER DIRECTOR, ARKANSAS STATE POLICE**

Mr. GOODWIN. No, sir.

The CHAIRMAN. Mr. Myers.

**SWORN TESTIMONY OF JOHN W. MYERS
INVESTMENT ADVISER & ACTUARY HIRED TO
ANALYZE POLICE RADIO UNDERWRITING PROPOSAL**

Mr. MYERS. No, sir.

The CHAIRMAN. Mr. Young.

**SWORN TESTIMONY OF PAUL B. YOUNG, JR.
VICE PRESIDENT, PUBLIC FINANCE DEPARTMENT
T.J. RANEY & SONS**

Mr. YOUNG. Nothing.

The CHAIRMAN. Senator Sarbanes, do you have a comment or a statement before we start?

Senator SARBANES. No, I am ready to go right to the questioning, Mr. Chairman.

Senator MACK. Mr. Chairman.

The CHAIRMAN. Senator Mack.

Senator MACK. I wonder if I may make a comment?

The CHAIRMAN. Certainly.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Given yesterday's report in Newsweek that the First Lady's fingerprints were found on the long-lost billing records, I would like to ask that this Committee subpoena the FBI agent who conducted the analysis of the original records. It is clear to me that, whoever left those records in the White House residence is guilty of a felony. It is a question of who and what crime, perjury or obstruction of justice.

This is one of the most serious questions I think this Committee has to answer. If the FBI analysis brings us closer to a conclusion as to who is behind the mysterious appearance of these records, I think we have a duty to examine that evidence. I would assume that we would coordinate with the Independent Counsel's Office so as not to interfere with the pursuit of this matter.

The CHAIRMAN. I think it is important to ascertain the correctness—the facts as it relates to whose fingerprints may or may not be on the billing records. I don't think it is fair to anybody to have it out there that indeed the First Lady's fingerprints may or may not be on there. I think, aside the question of the First Lady, the question of whose fingerprints, if any are there. That is something I think we should ascertain.

Recognizing that the original documents were sent to the Independent Counsel. The manner in which we proceed to obtain them is something that I will look to Mr. Chertoff and Mr. Ben-Veniste for their advice as to the best manner in which to go forward. We have a number of other issues, legal entanglements, that they are reviewing, I will ask them if they wouldn't review them for us and suggest the appropriateness of seeking this information. Specifically, first, whose fingerprints, if any, are on the billing records; and, second, the manner in which they might advise us to move forward on that. I will ask them to confer during a break and we would go forward from there.

Senator MACK. I thank the Chairman.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, could I just observe that I think the use of the language "felony, perjury, and obstruction of justice" is a gross unfairness. We don't have any facts that would support any of that.

Talk about leaping to conclusions. You know, it's quite reasonable to think that the reason—if those fingerprints are on there, as has been asserted in a press story which I take it reflects a leak which, to the credit of the Independent Counsel's Office, they have denounced in very strong terms. A perfectly rational explanation for it is they were placed on there in the course of 1992 when apparently these records were being looked at as part of a response to questions raised during the campaign.

I don't think it does a service to anyone, and it certainly doesn't serve a fair and objective inquiry, to come in and start using language of that sort this morning.

The CHAIRMAN. Well, we are going to review the matter. I think it is absolutely essential that we ascertain whose fingerprints, if any, are on the documents. I don't think it is fair to anyone to have a story—and, of course, that raises a question of how did that even get out, but that is another matter.

Senator MACK. Mr. Chairman.

The CHAIRMAN. Certainly, Senator.

Senator MACK. Mr. Chairman, I think it's important here, again, what I said was: Whoever left the records would be involved, in my opinion, either in perjury or an obstruction of justice. "Whoever." I didn't say a particular person. But this Committee, as well as other Committees, and the Independent Counsel, have pursued this information for 2 years and they just showed up one day. And to kind of imply that somehow or other I have jumped to a conclusion by using these words, I think is a distortion of what I had to say.

The CHAIRMAN. We will review that. I believe it is important because if certain people have fingerprints there, the questions are: How did they get there? When did they get there? Why and when did they have access to them? And were they responsible for bringing the documents there? So that is a very real concern and it does raise important issues.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Good morning, panel.

Mr. GOODWIN, you were the head of the State Police in 1984 and 1985; correct?

Mr. GOODWIN. That's correct. Yes.

Mr. CHERTOFF. Am I right that it was in 1984 during the course of flying back from the funeral of a trooper who had been killed that you recommended to the then-Governor that a new rehabilitated communications system for the State Police be purchased by the State?

Mr. GOODWIN. That is correct.

Mr. CHERTOFF. Mr. Young, you were part of the syndicate of investment companies that ultimately got the contract to underwrite and sell the bonds? Is that correct?

Mr. YOUNG. Yes, that's correct.

Mr. CHERTOFF. You were with the firm of T.J. Raney & Sons?

Mr. YOUNG. That is correct.

Mr. CHERTOFF. Who were the two other members of your group?

Mr. YOUNG. E.F. Hutton and Lasater & Company.

Mr. CHERTOFF. Lasater & Company was a company owned by Daniel Lasater?

Mr. YOUNG. That's correct.

Mr. CHERTOFF. Did you know Daniel Lasater before you joined him in this syndicate?

Mr. YOUNG. I did not.

Mr. CHERTOFF. Now, I take it that because there were three partners in this syndicate, you agreed to split expenses three ways?

Mr. YOUNG. That is correct.

Mr. CHERTOFF. For example when you got legal bills they would go to one of the partners and then the other partners would be asked to contribute their share?

Mr. YOUNG. That is correct.

Mr. CHERTOFF. Am I also right that when you were dealing with these kinds of expenses, like legal bills, it was the typical requirement that the bills be itemized? You would get a lot of detail about what you were actually paying for?

Mr. YOUNG. Well, it's my recollection that there was really only one bill that we received other than those that were settled at closing. And that bill did have some detail of time and expense expended.

Mr. CHERTOFF. I take it that's important because under the regulations that control public finance in the municipal securities area you need to have some degree of detail and itemization on bills that are being paid by the underwriting group?

Mr. YOUNG. I think that's just good business.

Mr. CHERTOFF. Did you ever get a bill or a request for money from Lasater & Company that didn't give you any clue as to what they were asking for?

Mr. YOUNG. I don't think I received a bill that didn't give us any indication of what they suggested it was for.

Mr. CHERTOFF. Did you ever get a bill that didn't have any itemizing details?

Mr. YOUNG. We did get a bill, and I think that was a part of the documents that we submitted to the Committee that indicated what they expected to be reimbursed for at closing.

Mr. CHERTOFF. I want to direct your attention to that bill. I think it's in your package. It is dated August 21, 1985, and it was produced by your company.

Mr. YOUNG. Is it in this package of information?

Mr. CHERTOFF. It is in this package of information in front of you. It might be the first document, in fact.

Mr. YOUNG. I didn't see it as I glanced through this information.

Mr. CHERTOFF. All right. I'm going to have someone take it down to you.

Mr. BEN-VENISTE. Do you have a number on this?

Mr. CHERTOFF. It has got a little number "15" on the bottom in handwriting.

Mr. YOUNG. All right. Here it is. I see it.

The CHAIRMAN. Could we just hold up for a moment? Let's see if we cannot get some copies made for the Senators as well.

Mr. CHERTOFF. While we are waiting, you can look at the bill.

Mr. YOUNG. I have looked it over.

Mr. CHERTOFF. Apparently there is a problem with the copying machine, and I do not know where the other copies are.

The CHAIRMAN. Let me suggest this, while we are trying to get copies made, Mr. Chertoff, that you move on to some of the other witnesses. All right? Or another part of the question.

Mr. CHERTOFF. Let me ask you this, Colonel Goodwin. You first learned about this contract, or the possibility of this contract, when you were flying back with Governor Clinton from this funeral. Is that right?

Mr. GOODWIN. We were flying to the funeral.

Mr. CHERTOFF. And you raised the issue with him; right?

Mr. GOODWIN. Yes, I did.

Mr. CHERTOFF. Then you had further discussions about this early in the next year in 1985; is that right?

Mr. GOODWIN. Early in 1980—in fact, I think there was probably continuous conversation about it throughout that time.

Mr. CHERTOFF. Was there a point in time that Governor Clinton indicated to you that Dan Lasater, or Lasater's group, was interested in this contract?

Mr. GOODWIN. No, sir.

Mr. CHERTOFF. No?

Mr. GOODWIN. Any particular time?

Mr. CHERTOFF. Yes, was there a time in 1985 before the contract was actually awarded to Lasater—

Mr. GOODWIN. I don't think I ever knew of it until we advertised for proposals, and proposals were submitted in April 1985.

Mr. CHERTOFF. At that time you learned that Lasater was interested?

Mr. GOODWIN. Yes.

Mr. CHERTOFF. Did you have a discussion with the Governor about that?

Mr. GOODWIN. Yes.

Mr. CHERTOFF. What did the Governor say to you about it?

Mr. GOODWIN. The Governor either said or implied—and this was after a brief conversation—Mr. Lasater had a reputation, I think everybody that was in the position to know, knew that Mr. Lasater was a user of cocaine—and the Governor either implied or said: We need to find out if Mr. Lasater is in trouble. We sure don't want there to be a chance of any of these financial institutions getting the contract and being arrested in the middle of it, something to that effect.

Mr. CHERTOFF. Now, I want to be quite clear on this. It is your testimony that at the time the Governor—did the Governor raise this with you, or did you raise this with him?

Mr. GOODWIN. I honestly cannot remember. I know it was discussed with him, but I do not know if I raised the question or if he did.

Mr. CHERTOFF. The understanding in the discussion was that Mr. Lasater was someone who used cocaine; right?

Mr. GOODWIN. That's correct.

Mr. CHERTOFF. In that discussion with Governor Clinton, did you raise with him whether it was appropriate to have someone who uses cocaine being the underwriter on a bond contract for a State Police Communications System?

Mr. GOODWIN. No, I don't think I did.

Mr. CHERTOFF. Do you see a problem with that, having a financial adviser with a cocaine problem doing State work?

Mr. GOODWIN. In my mind, yes, I would have seen a problem. However, Mr. Lasater had not been arrested, convicted, or even investigated.

Mr. CHERTOFF. We'll get to that in a second, but I want to start with this. You have indicated to us, and you have testified to this in your deposition, that you and Governor Clinton and other people as well understood or knew that Dan Lasater was a cocaine user. Did that fact alone in your mind create a reason to disqualify him from getting this State contract?

Mr. GOODWIN. Yes, I would say it did.

Mr. CHERTOFF. Did you say that to the Governor?

Mr. GOODWIN. Probably not in those words, no.

Mr. CHERTOFF. Did you say it in any words?

Mr. GOODWIN. Well, again, I think if I didn't say it I implied it.

The CHAIRMAN. Let me ask you this, Mr. Goodwin. Did you indicate that you were concerned?

Mr. GOODWIN. Yes, sir.

Mr. CHERTOFF. What did the Governor say to you?

Mr. GOODWIN. I think that's when he said, you need to find out, you know, if there is a possibility that Mr. Lasater would be arrested in the middle of this transaction. That may not be the exact words, but that's—

Mr. CHERTOFF. The substance.

Mr. GOODWIN. —essentially what it boiled down to, yes.

Mr. CHERTOFF. That is important because it seems to me what you are saying is that you raised the question of having someone who has a cocaine problem handling this deal, but what the Governor came back to you with is not, we ought to find out whether the guy uses cocaine and disqualify him if he does, but rather whether he was going to be arrested or caught for using cocaine. That's what you said in your testimony, too. The Governor's focus was not on does he use cocaine; it was on whether he was going to be arrested while he was handling the transaction. Correct?

Mr. GOODWIN. That's the way I remember it. I think that that's the only way it would have affected him if he had of been arrested.

Mr. CHERTOFF. So you were to find out basically whether there was an investigation in the works that was targeting Mr. Lasater?

Mr. GOODWIN. Yes.

Mr. CHERTOFF. Did you do a background check on Mr. Lasater?

Mr. GOODWIN. No.

Mr. CHERTOFF. Do you do background checks on bidders normally when they bid on bid contracts for the State?

Mr. GOODWIN. No.

Mr. CHERTOFF. At the time you went out to examine whether Mr. Lasater was potentially the target of an investigation, were you familiar with the fact that in one of his former investment firms, was a partnership with a fellow by the name of George Locke?

Mr. GOODWIN. Yes, I am.

Mr. CHERTOFF. He's a former State Senator?

Mr. GOODWIN. That's correct.

Mr. CHERTOFF. And he had been a partner in Mr. Lasater's predecessor firm?

Mr. GOODWIN. Yes.

Mr. CHERTOFF. Am I right that around the same time this discussion came up, which is to say in early 1985, there was actually a Federal Court case, a bankruptcy case involving Mr. Locke? Do you remember that?

Mr. GOODWIN. I remember it. I remember that Locke was arrested. I don't think we had any investigative work done within that case. I'm not familiar with it at all.

Mr. CHERTOFF. Let me see if I can refresh you a little bit. Do you remember that at the same time that Mr. Lasater was being considered, or was in the mix for this contract, there was a Federal Court case going on in Little Rock in which a Federal bankruptcy judge, made a statement, or made a determination that he disbelieved Dan Lasater's sworn testimony, and that there was evidence that he was involved in a conspiracy to defraud creditors of Mr. Locke?

Mr. GOODWIN. No, sir, I'm not aware, or I don't remember that.

Mr. CHERTOFF. Where is Federal Court in Little Rock relative to where your offices were in Little Rock?

Mr. GOODWIN. The Federal Court in Little Rock is downtown on East Capitol Street, about 700 West Capitol, something like that. My office was located about 6 miles west in the western part of Little Rock.

Mr. CHERTOFF. Would it have been difficult to send someone down to Federal Court in Little Rock and get the records of Mr. Lasater's testimony and the finding by the Federal judge that Mr. Lasater had lied under oath?

Mr. GOODWIN. I don't know if it would have or not. I don't even know if we were aware that the trial was going on, or what the testimony was.

Mr. CHERTOFF. Now, I still want to keep focused on this effort that you made at the Governor's request to find out the likelihood that Mr. Lasater would be arrested or be the target of an investigation during this transaction.

At around this same time, again in early 1985, while this work was being done on this radio issue, there was a trial of a lawyer by the name of Anderson, also in Federal Court in Little Rock, that was a drug case. Do you remember that case?

Mr. GOODWIN. I remember Anderson, and I remember a problem with him concerning drugs; yes.

Mr. CHERTOFF. And that was a case in which the Governor's brother testified as a witness? That's Roger Clinton?

Mr. GOODWIN. I don't know if I was aware that he testified as a witness or not. I probably was.

Mr. CHERTOFF. It was in the newspapers?

Mr. GOODWIN. Like I said, I don't remember, but I'm sure I was aware.

Mr. CHERTOFF. Do you remember from the trial that Roger Clinton testified that Mr. Lasater had loaned him \$8,000 to pay off a drug debt?

Mr. GOODWIN. I remember reading that in the newspaper, and probably saw it on the evening news.

Mr. CHERTOFF. Did you also know during the trial that one of the witnesses testified that there was actually an ongoing undercover effort to target Dan Lasater for narcotics trafficking?

Mr. GOODWIN. When would that have been?

Mr. CHERTOFF. In the trial in February 1985, which is a matter of a month or so—

Mr. GOODWIN. No.

Mr. CHERTOFF. —before the Governor spoke to you.

Mr. GOODWIN. No, sir, I don't remember that.

Mr. CHERTOFF. Let me see if I can refresh your memory by showing you a portion of an article in the Arkansas Gazette. It is DKS 17635. It has a headline that says, "Didn't Have Large Cocaine Dealings With Roger Clinton, Lawyer Testifies."

Mr. GOODWIN. It's headed "The Governor's Brother Testifies That Spa Attorneys"—

Mr. CHERTOFF. No. I think it is the next couple of articles. It is a 3-column article from The Gazette.

The CHAIRMAN. If you look at the monitor, Mr. Goodwin, you will see what it looks like.

Mr. GOODWIN. All right. I have it. Yes, sir.

Mr. CHERTOFF. Am I right that at this point in time the Arkansas Gazette was one of the two statewide newspapers?

Mr. GOODWIN. That's correct.

Mr. CHERTOFF. I want to direct your attention to the middle column. It is reporting on the testimony of Mr. Anderson, who is the lawyer who was charged with cocaine dealing in this particular case. You see there is a little subhead that says, "Meeting Arranged" and it goes down and it says:

In the summer of 1984, Anderson said Roger Clinton contacted him and told him that he had to see him. They arranged to meet in a boat on Lake Hamilton because [Roger] Clinton said he didn't want to be seen in a public place with Anderson—

Then I can't read the next few words.

Anderson said [Roger] Clinton told him that he had been approached by State Police investigators and that he was "very, very frightened . . . , totally frightened to death." He said [Roger] Clinton informed him that the investigators wanted to "set up" three people—[Roger] Clinton's drug supplier, Anderson and Lasater.

Do you remember reading that article?

Mr. GOODWIN. I don't remember reading it, but I remember the investigation. I think we were deeply involved in the investigation on Roger Clinton.

Mr. CHERTOFF. What this indicates is that in February 1985, which is 2 months before the Governor asks you about Dan Lasater and whether he is going to be the target of an investigation, 2 months before that request from Governor Clinton, there was actually sworn testimony in U.S. District Court reported in the newspaper that you've acknowledged is based on an investigation your own police were involved in that indicated specifically that Lasater was the target of a drug investigation. Is that correct?

Mr. GOODWIN. I don't think that is correct; no, sir. I don't think we started the investigation on Lasater until after the contracts were awarded on the communications system.

Mr. CHERTOFF. Well, the article is dated February 28, 1985. It is based solely on sworn testimony in a Federal Courtroom with a prosecutor, a defense attorney, a judge and a jury. This witness

gets up and takes the oath and testifies that he was told that there was an investigation—that he'd been told by Roger Clinton that Roger Clinton had been asked to set up Anderson, a drug supplier, and Dan Lasater.

This testimony in Court occurred 2 months before the Governor asked you whether Mr. Lasater was the subject of an investigation or the target of an investigation. Is it your testimony you were unaware of any efforts to target Mr. Lasater as reported in this paper and as sworn to in Federal Court?

Mr. GOODWIN. What I remember is that on the Lasater investigation, that sometime shortly after this financial transaction on the communications system, one of our employees, an investigator in the Criminal Investigation Division, I don't know if you'd say luckily, or just happened to talk to a former employee of Mr. Lasater, which started the investigation on Mr. Lasater.

Now, I know his name was mentioned back during the time we were investigating I guess Sam Anderson and Roger Clinton, but I don't think we ever did an investigation on him.

Mr. CHERTOFF. I take it you neither brought to Governor Clinton's attention nor did he bring to your attention anything about this testimony in Federal Court in a case in which his own brother testified which established that Lasater had been the target of a drug investigation as early as February 1985, before the contract was awarded?

Mr. GOODWIN. No, sir. I don't think he ever brought it to my attention, and I don't think I was ever aware of it. If I was, I have forgotten it.

Mr. CHERTOFF. Let me go back to this bill, Mr. Young, I asked you about, which I now think we all have copies of. It is a bill dated August 21, 1985, and it is to you from Michael Drake, Senior Vice President of Lasater & Company. What it says is: "Lasater & Company submits the following expenses for reimbursement on the referenced transaction: Travel, entertainment, and miscellaneous \$750; Legal, organizational, and miscellaneous \$26,500." Do you remember getting this bill?

Mr. YOUNG. Yes, I do.

Mr. CHERTOFF. And am I correct that this bill differed from other bills you had received earlier involving legal expenses from the Mitchell Williams firm which actually had a detailed, itemized list of what the firm did?

Mr. YOUNG. Yes, that's correct.

Mr. CHERTOFF. What did you do with this bill?

Mr. YOUNG. It is my recollection that when we settled the account for this transaction, we paid the \$750.

Mr. CHERTOFF. Did you pay the \$26,500?

Mr. YOUNG. No, we did not.

Mr. CHERTOFF. Why not?

Mr. YOUNG. As you pointed out, I don't think they submitted any detail for what this out-of-pocket expense was.

Mr. CHERTOFF. And was this a matter that was discussed at the board of T.J. Raney & Sons?

Mr. YOUNG. I don't recall, or I wouldn't have any way of knowing because I'm not a member of the board, or wasn't a member of the board of T.J. Raney.

Mr. CHERTOFF. Did you hear about discussions at the board of T.J. Raney about this \$26,500 and what it was for?

Mr. YOUNG. I do not remember that.

Mr. CHERTOFF. Was there some question about whether this was a legitimate bill, since it had no backup and no detail?

Mr. YOUNG. Well, without any detail about what it was for, clearly if we didn't pay it we had some question about whether it was something we should pay.

Mr. CHERTOFF. Did you call Mr. Drake up and ask him what the heck the \$26,500 was for?

Mr. YOUNG. I'm sure I probably did.

Mr. CHERTOFF. What did he tell you?

Mr. YOUNG. I don't recall.

Mr. CHERTOFF. Did he give you any detail?

Mr. YOUNG. He must not have. We didn't pay it.

Mr. CHERTOFF. I can reason that out myself. What I'm trying to get from you is what actually happened? I mean, here you get a bill for a sizable chunk of change. It has no backup. It makes common sense you're going to call Michael Drake up. You're going to say, what is it? What did he say to you?

Mr. YOUNG. I really don't recall. Looking at the bill, I would have thought that maybe it might have been just a way to readjust the profit percentages in the transaction; just, in effect, a request for a little bit more of the pie, so to speak.

Mr. CHERTOFF. In other words, you thought it might be a way to get some money that was not really for legal, organizational, and miscellaneous expenses, but would be used for some other reason?

Mr. YOUNG. Well, just in effect, would be a little bit higher profit distribution.

Mr. CHERTOFF. And that was never paid; right?

Mr. YOUNG. That's correct.

Mr. CHERTOFF. Speaking about law firms, your syndicate actually hired the Mitchell Williams firm to work for you in the period that was running up to the preparation, the passage, and the signing of the legislation that authorizes this police contract; right?

Mr. YOUNG. Early on I'm not sure I considered that we engaged them, so to speak, to work on our behalf. They did work on behalf of our team, together, to help develop the legislation and other things to implement the transaction.

Mr. CHERTOFF. It was, in fact, Mr. Lasater who hired them to do it; right?

Mr. YOUNG. If there was some arrangement early on that amounted to an engagement, they would have done that; correct.

Mr. CHERTOFF. This is now-Governor Jim Guy Tucker's law firm; is that right?

Mr. YOUNG. I think that Governor Tucker was a member of that firm at that particular time.

Mr. CHERTOFF. Of course, he wasn't Governor at that time; right?

Mr. YOUNG. Right. Correct.

Mr. CHERTOFF. Now, you actually got bills from Mr. Tucker's law firm for the work they did during this period of time before the legislation was passed; right?

Mr. YOUNG. I think that we got a bill, and I think that again was a part of the submission of materials we presented to the Commit-

tee. We got a bill that was forwarded to us from Michael Drake that had been submitted to their firm by the Mitchell firm requesting that we pay a portion of that expense—a third, as I recall.

Mr. CHERTOFF. So there is no mistake in your mind that in the period during which the legislation was being prepared, that the Mitchell firm was working for your syndicate and you were paying the money to do the work on the bill; right?

Mr. YOUNG. They were working with us in that effort, and after the legislation was passed we received the bill and, from my recollection, we paid a third of it.

Mr. CHERTOFF. I want to even show you, there is an itemized bill which is in your package. It bears the handwritten number "83" in the corner, and it is dated February 20, 1985. It is "For Services Rendered as of 1/31/85." I want you to turn to page 83. The numbers are at the bottom. Do you see a statement for 1/18/85, "Review revised DFA"—that would be Development Finance Authority—"Bill for Governor's Office, prepare revised bills for distribution." Do you see that?

Mr. YOUNG. I see that.

Mr. CHERTOFF. That is part of the bill that you shared in paying for the Mitchell Williams firm's work on preparing this bill, which began as an ADFA bill, and then later became the Police Radio Bill; is that right?

Mr. YOUNG. That's what that statement appears to refer to, but I don't recall that it was originally drafted as an ADFA bill, but that may have been the case.

Mr. CHERTOFF. And you paid this bill?

Mr. YOUNG. I think that is correct. We paid a third of it.

Mr. CHERTOFF. So you and your syndicate, this firm was working for you and you were paying them for preparing this legislation; right? That is what it says in the bill.

Mr. YOUNG. Well, it says in the bill that it was a bill to Lasater & Company. It wasn't a bill to our firm, or our account.

The CHAIRMAN. You did pay one-third?

Mr. YOUNG. Yes, we did.

The CHAIRMAN. Come on, let's stop quibbling.

Mr. CHERTOFF. I want to read you the testimony of Ms. Betsey Wright last Thursday:

Ms. WRIGHT. There were no bids. We were establishing legislation. The Mitchell firm wrote our ADFA legislation, Mr. Chertoff. This was a spinoff piece of separate legislation. The Mitchell firm obviously was going to continue doing this. I know nothing about the Mitchell firm's relationship with Mr. Lasater, nothing. I'm not in the business of keeping track of who has what law firm.

Now this is again Betsey Wright. You remember Betsey Wright? She was the Chief of Staff to the Governor at this time?

Mr. YOUNG. I do know who she is.

Then we go on:

Mr. CHERTOFF. Whether or not, now did you know that they had been hired to work on this particular matter by Dan Lasater?

Ms. WRIGHT. I did not.

Then she concludes by saying:

Ms. WRIGHT. All I know is that the work that the Mitchell firm did at our request in working with us was on our legislation that was part of the Governor's package on the Governor's initiatives and it had nothing to do with whatever else they were doing for Dan Lasater. That's all I know.

Now, you would agree with me, Mr. Young, that that's not true? That this bill—which you paid one-third of—absolutely proves that when they were prepared this ADFA bill for the Governor's office, they were actually working for your syndicate, for Mr. Lasater, and you were paying them for it. Right?

Mr. YOUNG. They were working as part of our group, and to the extent that we made a payment on the bill, I guess you are correct that they were working for our efforts.

Mr. CHERTOFF. And Betsey Wright is incorrect when she says that they were working exclusively for the Governor?

Mr. YOUNG. Well, I cannot really evaluate the accuracy of what she's saying.

Mr. CHERTOFF. In fact, would you agree with me that the reason that you—I mean, you actually began this effort to get this contract working with Hutton, and Lasater only came in as the third partner a little bit later? Is that right?

Mr. YOUNG. No, that is not correct.

Mr. CHERTOFF. Well, putting aside the timing of this, would you agree with me that the reason Lasater was brought in was precisely because Lasater was seen as having a relationship with the Governor?

Mr. YOUNG. No, that is not correct.

Mr. CHERTOFF. I want to read you the testimony of Mr. Michael J. Drake concerning his conversation with Dan Lasater back at the time, and this is at page 87 of his deposition.

Question: Could you explain to me in your words how you relayed that to him and how you characterized it? What did Mr. Synder—

Answer: I said, as well as I can remember—it was a long time ago—a T.J. Raney has come to us, because of your relationship with Bill, to try to get this legislation passed that will enable us to take a proposal to the State Police Commission to sell these securities and help them acquire this new communications system, this hot-shot thing Motorola has come up with.

You dispute that you went to Lasater & Company because of Mr. Lasater's relationship with Bill Clinton?

Mr. YOUNG. That's correct.

Mr. CHERTOFF. You dispute Mr. Drake's testimony?

Mr. YOUNG. That's not my recollection of what—

Mr. CHERTOFF. Mr. Drake also goes on to say, "We chose the Mitchell law firm in Little Rock to draft the legislation for us." Now, you agree that that part of the testimony is true and is supported by the bill; right?

Mr. YOUNG. That's correct.

Mr. CHERTOFF. Did you know that the Mitchell firm also rendered the legal opinion that ultimately decided the outcome of the bidding contest between the Lasater group and First Capitol, which was the bidder that was the kind of next-in-line to get the contract?

Mr. YOUNG. They did what? I'm not sure I understand what your statement was.

Mr. CHERTOFF. Didn't the very same law firm that you guys paid for to write the legislation with the Governor's office, didn't they also get called upon to write the critical opinion that wound up determining that the Lasater bid would be the winning bid on this contract?

Mr. YOUNG. No, they did not.

Mr. CHERTOFF. I am going to show you a letter dated May 16, 1985, from the Mitchell Williams firm. It is in your package. Take a moment to get that out. Do you recognize that?

Mr. YOUNG. I have not seen this letter. If I have seen this letter, it's been some time ago. I don't recall it.

Mr. CHERTOFF. Mr. Young, let me set the stage. The stage is that when this selection was made, First Capitol, which was one of the competing bidders, complained because what they said is that the Raney/Hutton/Lasater bid was based upon a proposal that allowed the winning bidders to kind of keep the money and invest it for a period of 6 months before they distributed it back to the investors. What the losing bidder said was, "Hey, we didn't know you were allowed to do that under the law. As we read the legislation, you have to pay the investors every month. And if we had known that, we could have redone our bid and beaten the Lasater Company."

To resolve this critical issue of interpreting the legislation, not surprisingly the Director of Purchasing turned to the Mitchell Williams firm and got an opinion from the Mitchell Williams firm which had drafted the legislation that said that it was within the legislation to have Lasater structure the deal the way he had done in his bid. And that is what allowed Lasater to win the contract.

So my question to you is this: Whether or not you specifically remember this letter, Mr. Young, do you recognize the Mitchell, Williams, Selig, Jackson & Tucker firm, Jim Guy Tucker's firm, that wrote this opinion that made the final decision on who would win this as being the very same firm that wrote the legislation for the Governor's office while you were paying them to do it?

Mr. YOUNG. Well, I would disagree with your statement about what the issue in this letter is. This letter says the question presented is whether Section 5 of the Act requires the lease payments as defined in Section 3 of the Act are required to be made on a monthly basis to investors who purchase an interest in a lease agreement authorized by the Act.

Mr. CHERTOFF. Right. This is my last question. Wasn't the complaint that was raised by the losing bidder that they thought you had to pay on a monthly basis? Whereas, the Lasater, your group, took the position you could hold the money for 6 months and invest it and then pay the money back after you've made some money in the stock market, or in other securities? And didn't this letter reach a decision that said that the proposal that your group put in was in fact permissible, notwithstanding what appeared to be in the law a requirement of monthly payments?

Mr. YOUNG. Our proposal was prepared, in my recollection, exactly like all the other proposals that were presented to the State Police. I think the one that you are referring to was the only one that interpreted the law as requiring monthly payments to investors. They simply misunderstood the law. And the other presenters, or proposers, on this transaction had other law firms in addition to the Mitchell firm involved with their transaction that took the same interpretation we did.

Mr. CHERTOFF. The legal firm that decided that your interpretation was right and theirs was wrong was the legal firm that you had hired; right?

Mr. YOUNG. They presented an opinion on that issue. I don't think that resolved the question of who had the best proposal.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Counsel.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, panel.

Before we get into the business of this panel, let me simply note that in addition to the leak relating to Mrs. Clinton's fingerprints being present on the billing records, there was an additional leak that we ought to mention, I guess, in the spirit of equal opportunity leaking from the Independent Counsel's Office, to say that Margaret Williams' fingerprints were not found on the billing records. We've had much speculation and much to do about whether Ms. Williams carried those records out of Mr. Foster's office, the presumption being made that they were in Mr. Foster's office the night of Mr. Foster's suicide, and it would seem that those conclusions by the FBI are equally consistent with the notion that Ms. Williams did not handle those billing records.

The record that we have established is that in 1992 these records were the subject of press inquiries during the 1992 campaign; that they were reviewed by Mr. Foster and others; and it was certainly logical that Mrs. Clinton would have handled them in 1992.

So getting to this morning's hearing—

Senator SARBANES. Mr. Chairman, could I just interject there?

The CHAIRMAN. Certainly.

Senator SARBANES. I do think that this question of leaks is an important one. We discussed it last week, and we obviously will follow up on it. But I do want to read in what the spokesperson for Mr. Starr said. She said:

That the Office would not comment on the accuracy of reports that Mrs. Clinton's fingerprints had been lifted off the billing records, or even whether such investigative information exists.

We do, however, take seriously the claim that confidential information might have been disclosed. The public disclosure of any investigative information by a member of this office or any other law enforcement agency would constitute an intolerable breach of confidentiality.

I just think that ought to be in the record. We had that article, and then there's a story today that says, "FBI fingerprint experts who found First Lady Hillary Rodham Clinton's prints on long-lost Rose Law Firm billing records . . ." So now it has become, as it were, supposedly an established record. It just shows how this thing progresses. It goes on to say, ". . . did not find those of her Chief of Staff, Margaret A. Williams, law enforcement sources say."

This kind of leaking of material really makes it very difficult to carry on, I think, an orderly inquiry by this Committee, and it certainly complicates the inquiry by the Independent Counsel.

The CHAIRMAN. If I might, Senator, I think that goes to the heart of the matter that Senator Mack raised. I think we should ascertain how we can go about getting that information, and whether it is true or not true. I have no way of knowing, nor have I indicated that I believe fingerprints are there, or not there, or whose may, or whose may not be there.

I am somewhat surprised that there are any fingerprints, given the manner in which the original papers were handled. We had extensive testimony with respect to that. We had the testimony that

came from Jane Sherburne who was here. Ms. Sherburne was concerned about the methodology, whether they should make copies at the time, or exactly what should be done, and she raised that issue.

I think there was the counsel, Mr. Schulke, who was there for Ms. Huber, as well as Mr. Kendall, and the judgment was made to make copies and to send the original over to the FBI. So I don't know whether there are any fingerprints there. Certainly no one on this Committee had this information. No one on this Committee could have leaked it. Whether it was leaked from FBI sources or sources with the Independent Counsel, I have no way of knowing; and whether they are legitimate or not; or whether Maggie Williams' fingerprints are there or not there, or the First Lady's, I just don't know.

But I do believe that Senator Mack's request is one that this Committee should follow through on. The manner in which we do it I would certainly, as I have indicated, look to work with the Minority Counsel and with the Ranking Member to establish a methodology for attempting to find out whose fingerprints, if any, were on those billing records.

Senator SARBANES. I don't object to the method. I do object to the use of the terms "felony, perjury, and obstruction of justice" as though it was some sort of established fact. I note that in the story in *The Washington Post* it was pointed out that it was possible Mrs. Clinton handled these records during the 1992 campaign.

The CHAIRMAN. Well, it could be——

Senator SARBANES. And that story goes on to say, "Fingerprints can remain intact on some materials, including paper, for years." So, you know, it is one thing to try to get an explanation; it is another to sort of leap and start making charges or accusations.

The CHAIRMAN. I think it is important that we——

Senator MACK. Mr. Chairman.

The CHAIRMAN. Yes, Senator Mack.

Senator MACK. My colleagues on the other side want it both ways. They want to charge that I'm jumping to conclusions, but yet in the same discussions they make the charge that the Special Counsel, the Special Prosecutor, is the one responsible for leaking the information, which is somebody jumping to a conclusion there. I mean, all I am doing is raising the issue here, and I think it is a legitimate issue to raise.

Senator SARBANES. All I did was quote the language of the Independent Counsel. I didn't make the charge one way or the other. I mean, they're the ones who have the records, and as I understand it, are doing the fingerprint examination. But in any event——

Senator MACK. I am referring to Mr. Ben-Veniste. He certainly, I think, made the comment that the Special Prosecutor or Independent Counsel had leaked that information.

Mr. BEN-VENISTE. Well, if I may, what I said was that the FBI, or the Independent Counsel, someone working with these records, appeared to have leaked the information, and I think that's consistent with the statement made by the Independent Counsel's Office which regretted the fact that a leak had occurred.

The CHAIRMAN. I think we all regret when leaks occur. But I also think we shouldn't rush to judgment, and I am not suggesting who did or didn't, but there's a question as to some information that ap-

peared back in late January or early February. I am convinced that no one from our staff leaked that; that there was great access to those documents. We'll attempt to narrow that down, who may or may not have in this instance, and certainly it would appear that no one from the staff has ever had any access whatsoever to it.

But questions remain: What about the facts? Are there fingerprints? I don't know. Should we ascertain if there are? I think it is reasonable before we conclude our inquiry to certainly attempt to ascertain that. The appropriate manner in which we do it, I am going to leave to our two distinguished Counsels to see if they can't work out in what manner we should proceed to get the information as to whose fingerprints, if any, are on there. That I believe is appropriate and is something I think we should follow through on.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. I presume that my time has been restored?

The CHAIRMAN. We will give you whatever time you feel is necessary.

Mr. BEN-VENISTE. Thank you.

Let's talk about, in context, what this contract back 11 years ago in Arkansas between the State of Arkansas and the Bond Underwriters was all about. First, let's find out what it's not about. Is there anyone on this panel who believes that this bond contract had something to do with the Madison Bank or Madison Savings & Loan?

[Witnesses nod in the negative.]

Mr. BEN-VENISTE. Did it have anything to do with Whitewater?

Senator SARBANES. You are all shaking your head "no," but that doesn't show up with the reporter. So if you don't think it had anything to do with it, you need to say, no, it didn't.

Mr. YOUNG. No.

Mr. MYERS. No.

Mr. GOODWIN. I have no knowledge.

Mr. MITCHUM. No.

Mr. BEN-VENISTE. Did it have anything to do with the Whitewater investment which was entered into, as I understand it, back in 1978? Did this transaction somehow intersect with Whitewater?

Mr. YOUNG. No.

Mr. MYERS. No.

Mr. GOODWIN. No.

Mr. MITCHUM. No.

Mr. BEN-VENISTE. So we are looking at a transaction that involved the State of Arkansas and some business that it was doing with bond underwriting back 11 years ago that had nothing to do with the McDougals, Madison Savings & Loan, or the Whitewater investment. Just so that we are all on the same page here.

Mr. YOUNG. Yes.

Mr. MYERS. [Nods in the affirmative.]

Mr. GOODWIN. That is my understanding.

Mr. MITCHUM. No, sir, not to my knowledge.

Mr. BEN-VENISTE. Now since we are looking at this, I suppose what one would want to find out, if there was some kind of a rigged or phony deal back 11 years ago in Arkansas, was whether this whole bond underwriting was a pretext to build a bridge, as it

were, over a gully that no one travelled over, essentially something that was unnecessary.

Let me turn to you, Mr. Goodwin. Your background is with the Arkansas State Police. I understand you had 38 years of service before your retirement?

Mr. GOODWIN. That's correct.

Mr. BEN-VENISTE. Who appointed you to be the Director?

Mr. GOODWIN. Governor Frank White.

Mr. BEN-VENISTE. Governor Frank White. Was he a Republican or a Democrat?

Mr. GOODWIN. He was a Republican.

Mr. BEN-VENISTE. When did Governor White appoint you to be the Director of the State Police?

Mr. GOODWIN. July 1, 1981.

Mr. BEN-VENISTE. Mr. Mitchum, what was your role back in the 1980's in Arkansas?

Mr. MITCHUM. Relative to this issue, I was on the Arkansas State Police Commission.

Mr. BEN-VENISTE. As I understand it, you served on the Arkansas State Police Commission from 1982 until 1989? Is that correct?

Mr. MITCHUM. That's correct.

Mr. BEN-VENISTE. Who appointed you to the Arkansas State Police Commission?

Mr. MITCHUM. Governor Frank White.

Mr. BEN-VENISTE. So you were also appointed by a Republican Governor prior to the bond underwriting that we are going to look at here today?

Mr. MITCHUM. That's correct.

Mr. BEN-VENISTE. Now do either of you individuals feel that the proposal put together by Raney, E.F. Hutton, and Lasater was not the best bid put in for that contract?

Mr. MITCHUM. I believe it was the best deal for the people of Arkansas.

Mr. BEN-VENISTE. Mr. Goodwin.

Mr. GOODWIN. Yes. I had to depend on other people, but I think I depended on good people; good, honest, and hard-working people.

Mr. BEN-VENISTE. Mr. Myers, you are an actuary? Correct?

Mr. MYERS. That's correct.

Mr. BEN-VENISTE. You were brought in by Mr. Mitchum, if I understand it, to essentially run the numbers to compare the various bids that had been put forward for this underwriting contract?

Mr. MYERS. That's correct.

Mr. BEN-VENISTE. What was your conclusion, sir, as to who had put forward the best bid for the State of Arkansas?

Mr. MYERS. I believe at the time that I concurred with their decision that it would be the Raney/Hutton/Lasater bid.

Mr. BEN-VENISTE. Of course, Mr. Young, you were a partisan since you were a part of that triumvirate who put in the best bid, but I take it your position was that you had put forward the best bid?

Mr. YOUNG. Yes, it was.

Mr. BEN-VENISTE. Now let me ask whether there was a need for police radios in Arkansas in 1985? Mr. Goodwin, could you tell us

how it came to pass that you needed to raise the funds which this bond underwriting addressed?

Mr. GOODWIN. Well, to begin with, the system we operated under was a low-band AM radio system. If I'm not mistaken, our studies showed that we got about 35 to 40 percent coverage statewide with that system.

Mr. BEN-VENISTE. What does that mean? That more than half of the State was out of radio communication?

Mr. GOODWIN. More than half the State was dead as far as police communications. The new system brought us up, and the contract was for, to 90 percent coverage, statewide—90 percent coverage 90 percent of the time. All indications that we got from the surveys that we ran, they exceeded the 90 percent required.

Mr. BEN-VENISTE. Was there a particular incident in Arkansas that highlighted the need to upgrade and replace the existing radio communications network for the State Police?

Mr. GOODWIN. Yes, I think it did. I don't know that it really had anything to do with it, but we had a trooper by the name of Louis Bryant that was shot and killed on a traffic stop just east of De Queen, Arkansas.

Louis Bryant was in one of those dead spots where he could not call into his Troop Headquarters. I confirmed that myself shortly after the killing by being in that location and tried to transmit out. Yes, that particular case was used as an example of why we needed a new system.

Mr. BEN-VENISTE. So it is clear beyond any doubt that there was a need to replace the antiquated communications system being used by the Arkansas State Police in the mid-1980's. Now the question is: Was it appropriate to raise the funds to pay for the new radio communications system by issuing bonds. Was there any question about that in your mind?

Mr. GOODWIN. I don't recall any questions, ever, by anybody that it was inappropriate to do.

Mr. BEN-VENISTE. So there was a need for the radio equipment. There was a need for a way to finance the purchase of the radio equipment. And there is no one who says that it was inappropriate to finance those purchases through the use of bonds.

That radio equipment has been in place now for 11 years. Was there any suggestion that the equipment or the purchase of that equipment was a phony deal, or was rigged in some way, and you got kind of a lemon that no one else would take?

Mr. GOODWIN. To my knowledge we had very little criticism—the biggest criticism I think we had probably came from the Sheriff's Departments who did not have the funds to actually piggyback onto the program. You know, I don't know if it was disappointment or what, but there was some feedback from Sheriffs on it.

Mr. BEN-VENISTE. But in terms of the State Police itself, you indicated that with the upgraded system, the new system, you now had better than 90 percent coverage statewide by your troopers communicating through the new equipment; correct?

Mr. GOODWIN. That's correct.

Mr. BEN-VENISTE. Now let's talk about how the process went forward. Mr. Mitchum, were you specifically designated to be the

hands-on representative of the State Police in connection with the solicitation and receipt of the bids?

Mr. MITCHUM. Not specifically.

Mr. BEN-VENISTE. What role did you play?

Mr. MITCHUM. Since I was the only Commissioner with a finance background, I became sort of the in-house number-cruncher, if you will, by virtue of my—

Senator SARBANES. When did you become a Commissioner, Mr. Mitchum?

Mr. MITCHUM. In 1982.

Senator SARBANES. Is that by appointment of the Governor?

Mr. MITCHUM. Yes, sir.

Senator SARBANES. Confirmed or just a Governor's appointment?

Mr. MITCHUM. Confirmed by the Senate.

Senator SARBANES. Who appointed you?

Mr. MITCHUM. Governor Frank White.

Senator SARBANES. Governor White?

Mr. MITCHUM. Yes, sir.

Mr. BEN-VENISTE. Did you draw upon Mr. Myers' expertise in connection with evaluating the bids that were received?

Mr. MITCHUM. Yes.

Mr. BEN-VENISTE. How did that come about?

Mr. MITCHUM. I did some computations on the proposals that were received in response to the RFP's and came to a conclusion that I thought the Raney/Hutton/Lasater proposal was the best one in concept. And, knowing that this was a volatile issue—and at that time I think it was the largest bond issue that had ever been done by the State government in Arkansas—I wanted some independent verification or corroboration. So I talked with my attorney, Robert Hardin, who referred me basically to Mr. Myers.

Mr. BEN-VENISTE. He referred you to Mr. Myers as an expert who could look at the numbers and the proposals with a fresh eye and determine whether you were correct in terms of your analysis?

Mr. MITCHUM. That's correct.

Mr. BEN-VENISTE. Mr. Myers, you have indicated that at the end of the day after you were finished with your evaluation, and I won't ask you to get into the actuarial processes at this point that were applied, but perhaps at some point today we will hear all of that, but I would like to get, again, to the bottom line. Did you agree with Commissioner Mitchum?

Mr. MYERS. It has been a long time, and I am looking at what these notes are here.

Mr. BEN-VENISTE. I understand that.

Mr. MYERS. I calculated some numbers in the analysis as not readable. I can't say exactly whether I said the number one bidder was First Capital or Raney/Hutton/Lasater as the way these numbers are presented right here. I really don't have a very clear picture of that.

Mr. BEN-VENISTE. Well, I understand it is a long, long time ago, and to ask for your recollection on the computation is one thing—

Mr. MYERS. I think as I said early on the basis of what I recollect, I think I went along with Mr. Mitchum's concurrence on it. I believe that's what I came to the conclusion.

Mr. BEN-VENISTE. Mr. Young, the notion here has been put forward that you were very interested in associating with Mr. Lasater for some reason, associated with Mr. Lasater's perceived connection to Governor Clinton. Let me ask you when you first heard about the opportunity to submit a proposal with respect to this radio contract, did you seek out Mr. Lasater or did you go somewhere else to partner up?

Mr. YOUNG. We initially, when we first became aware of the transaction because of its size and complications, and because of our size and capitalization at that time, this was the type of transaction we would normally partner with another investment firm on. Our first call to consider another partner was to Stevens, a Little Rock investment firm.

Mr. BEN-VENISTE. Now according to Ms. Wright's testimony before this Committee, prior to Governor Clinton's election in 1992—1982, I'm sorry, I get decades mixed up sometimes, that Wurthen & Company, and I take it you in partnership with Wurthen & Company, had essentially a lock on the bond business; that you were the principal or Wurthen was the principal underwriter who got the State of Arkansas' business?

Mr. YOUNG. I think you might be referring to Stevens?

Mr. BEN-VENISTE. Stevens, I'm sorry.

Mr. YOUNG. Well, both Stevens and Raney had been in existence in Arkansas since the early 1930's, and we had, of the two firms, we probably did more business in Arkansas than any other of the firms in the State at that time.

Mr. BEN-VENISTE. And is it fair to say that following Governor Clinton's 1982 election and going forward, the process was opened up and that more underwriting companies were awarded contracts with the State?

Mr. YOUNG. I think it is fair to say that after that time that certainly more firms have been involved in State business.

Mr. BEN-VENISTE. Now the notion has put forward that legislation creating the opportunity to raise funds by way of a bond offering somehow was tailor-made to favor you, Mr. Young, and your group. Is there anyone sitting at this table who subscribes to the position that, as a result of the legislation, the other bidders were disadvantaged because the bid process was skewed toward the Raney/Hutton/Lasater bid?

Mr. YOUNG. No.

Mr. MYERS. I have no knowledge.

Mr. GOODWIN. I don't believe that.

Mr. MITCHUM. No.

Mr. BEN-VENISTE. I am advised that the legislation for the bond underwriting that provided for the State to solicit the bids was signed on April 4, 1985. That is the same day there was a fundraiser in the Madison Bank. Now it is possible that this could just be a coincidence. Is there anyone sitting at this panel who has any reason to believe that on April 4, 1985, there was some connection between a fundraiser over at the Madison Savings & Loan and the signing by the Governor of the legislation allowing you to go forward to solicit bids for the radio contracts?

Mr. Mitchum.

Mr. MITCHUM. No

Mr. BEN-VENISTE. Mr. Goodwin.

Mr. GOODWIN. I have no reason to believe there's a connection.

Mr. BEN-VENISTE. Mr. Myers.

Mr. MYERS. I have no reason to believe anything—

Mr. BEN-VENISTE. Mr. Young.

Mr. YOUNG. No.

Mr. BEN-VENISTE. One of the things one might look at, if there was some kind of shenanigan going on associated with this contract back 11 years ago, is whether there was a windfall made by the winning bidders. I guess, Mr. Young, you are the person who could comment on that. Certainly from the police standpoint, if I understand the testimony of Mr. Mitchum and Mr. Goodwin, they were satisfied with the process. They thought that you had submitted the best bid. The radios all performed satisfactorily, and from the State of Arkansas' standpoint everything worked out well.

From your point of view as one of the three in the triumvirate that made the winning bid for the bond underwriting, can you tell us whether you made a profit or suffered a loss?

Mr. YOUNG. We did make a profit.

Mr. BEN-VENISTE. How much of a profit was it?

Mr. YOUNG. I'd have to look at some documentation just to refresh myself on the actual profit, but I know that the total gross spread for the total underwriting fee that we charged was 2.5 percent of the par amount of the bonds, which would approximate \$730,000. Now that was split amongst the underwriting firms and was used in part to pay selling commission to those that sold the bonds, and also to pay expenses.

Mr. BEN-VENISTE. In terms of those who sold the bonds, could you explain whether those bonds were taken into the companies at their own account as they were then sold out?

Mr. YOUNG. As I recall, when the bonds were offered all the firms that were selling the bonds would have been taking orders from customers. Ideally, once we agreed to underwrite the issue, all the bonds would be committed for.

Mr. BEN-VENISTE. What happened in terms of interest rates in the interim between the time that the bonds were issued and the time they were all sold out?

Mr. YOUNG. Well, I had occasion just to look back and verify my recollection about just the state of the bond market at that particular time. During the 2 weeks or so before the actual offering of the bonds, interest rates went up substantially. I know it was my recollection that that was a tough market to sell bonds when interest rates were going up.

Mr. BEN-VENISTE. So as a result of interest rates going up, you got caught offering bonds that had been pegged at a lower interest rate and you three had taken these bonds in for your own accounts to sell them out?

Mr. YOUNG. Essentially what we try to do is price the bonds, or offer the bonds at the most favorable rate for the client, which we did. And we ultimately were successful in delivering an interest rate that was actually slightly below what we put in our proposal.

Mr. BEN-VENISTE. Let me read you from Mr. Drake's testimony which Mr. Chertoff has previously alluded to at his deposition at pages 178 to 179:

Question: Do you have any idea whether it was generally profitable for the firm?

Answer: I can tell you Mr. Lasater was on my rear end constantly to sell bonds because interest rates were going up. We had purchased them at a level, and we had to underwrite. We owned the bonds at that level, and we had a huge inventory, and every day that interest rates went up we lost money. So from that perspective, it was not a very profitable deal.

Do you agree with that characterization?

Mr. YOUNG. I heard that they had a problem in getting rid of, or selling the bonds that they had taken down, or taken liability for. Our particular situation was that we had a very successful sale. And I think each firm and their ultimate results depend upon how they were able to deal with their own bonds.

Mr. BEN-VENISTE. Now the issue of Mr. Lasater's use of cocaine has come up here. First of all, how many employees were there at Lasater & Company? Do you know, Mr. Young?

Mr. YOUNG. I don't really know.

Mr. BEN-VENISTE. Approximately 50?

Mr. YOUNG. 10 to 100, including support personnel. I don't know.

Mr. BEN-VENISTE. The bid was put in by your company, Raney, E.F. Hutton, a major national company, as well, and Mr. Lasater.

Now the question that has been posed is whether cocaine use by one individual who was not under investigation for distribution or narcotics trafficking as in Mr. Chertoff's terms, would somehow disqualify the whole shebang of the three companies—and I stress the word "companies"—that put forward a proposal. Would you have felt that was appropriate, Mr. Young?

Mr. YOUNG. I certainly would be concerned about cocaine use by somebody I was doing business with.

Mr. BEN-VENISTE. In terms of the cocaine use in the United States, and I certainly am not justifying this, but the figures are in the tens of millions, are they not, of individuals who use cocaine? I am not talking about cocaine dealers, now. Was that fair to say, Mr. Goodwin?

Mr. GOODWIN. Very prevalent, yes, sir.

Mr. BEN-VENISTE. So the matter of Roger Clinton and his drug problem was obviously one of considerable pain to his brother, Governor Clinton. Is that fair to say, Mr. Goodwin?

Mr. GOODWIN. Yes, sir.

Mr. BEN-VENISTE. And if I am not mistaken, although this has absolutely nothing to do with the subject matter of our mandate as a Committee, but since it has been interjected here into these hearings, it is my understanding that the Governor was aware that a "Sting Operation" was directed toward Roger Clinton in which "he," Roger Clinton, was prosecuted for violation of the laws regarding controlled substances. Is that correct, Mr. Goodwin?

Mr. GOODWIN. I don't believe it is, sir. I don't think the Governor was aware of the "Sting Operation" until shortly, 2 or 3 days before we arrested Roger Clinton.

Mr. BEN-VENISTE. But the fact is, that prior to his brother's arrest, he was made aware of it. He reluctantly, I suppose, took in this information. I am sure he was saddened by it, and said, "go ahead, do what you have to do"?

Mr. GOODWIN. That is correct.

Mr. BEN-VENISTE. Thank you.

Senator MACK. Mr. Chairman, I yield my time to Mr. Chertoff.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. I have no questions at this time.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Myers, you were hired by Mr. Mitchum to do an independent analysis; right?

Mr. MYERS. That's correct.

Mr. CHERTOFF. Mr. Mitchum, you hired Mr. Myers to do it before the final meeting at which the final presentations were made on May 10th; right?

Mr. MITCHUM. Correct.

Mr. CHERTOFF. There was a meeting on May 10th when all the finalists were supposed to make their final presentations; right?

Mr. MITCHUM. Correct.

Mr. CHERTOFF. But you had in your own mind an idea of who you thought should be selected; right?

Mr. MITCHUM. After we got the proposals, I started——

Mr. CHERTOFF. And that was the Lasater group; right?

Mr. MITCHUM. Yes.

Mr. CHERTOFF. So you brought Mr. Myers in.

Mr. Myers, isn't it a fact that what Mr. Mitchum told you to do was to run some—well, let me ask you this question. He didn't really say to you, just do a blind analysis, look at these proposals and tell me which is the best? What he really said to you was to run some numbers to see whether the bid that they had selected was, in fact, the best of the four bids; right?

Mr. MYERS. I don't recollect exactly what he said to me.

Mr. CHERTOFF. Do you recollect what you testified to on February 20th of this year?

Mr. MYERS. And that's?

Mr. CHERTOFF. I will give you the page number. It is page 14 of your deposition. This goes right to the heart of the question about whether this is, as Mr. Ben-Veniste sought to establish, a real, independent doublecheck by someone just to kind of call it as he sees it, or whether this is something that is a done-deal. The question at line 22 of page 13 is as follows:

Question: And I realize this was awhile ago, but I wondered if you could explain to me, when he [Mr. Mitchum] called you up to ask you to do the work, how he described what task he wanted you to perform and what he asked you, what you were capable of doing?

And this, Mr. Myers, is your sworn answer:

Answer: He asked me whether I could look at the three or four different proposals that had been presented to the State Police Board, and whether I could run some numbers to see whether or not the bid that they had selected was in fact the best of the four bids. And that was a present-value calculation, and my memory says that's what I did.

Would you agree that that was your testimony under oath?

Mr. MYERS. That is what I said in the deposition, yes.

Mr. CHERTOFF. What that means is, not that you came in doing kind of a blind taste test, but that you came in being told that there was already a decision and an outcome had been reached, and now they wanted to find out whether the bid they had selected was actually the best bid. Right?

Mr. MYERS. That's correct.

Mr. CHERTOFF. Now—by the way, had you ever done this kind of analysis of underwriting bids before?

Mr. MYERS. No.

Mr. CHERTOFF. Have you ever done one since?

Mr. MYERS. No.

Mr. CHERTOFF. Do you wonder why Mr. Mitchum then hired you to do something that you had no experience in doing, and you've never done since?

Mr. MYERS. He asked me to look at those, give my opinion on them, and I did.

Mr. CHERTOFF. Mr. Young, you had a meeting in a hotel room with Mr. Mitchum and Mr. Myers before the general meeting on May 10th when the final proposals were supposed to be due; right?

Mr. YOUNG. That's correct.

Mr. CHERTOFF. Who was in that meeting? You are in a hotel room, where? Where is it relative to the regular Commission meeting place?

Mr. YOUNG. It's my recollection it was in a hotel room in downtown Little Rock.

Mr. CHERTOFF. Who set up that meeting?

Mr. YOUNG. It was my recollection that Mr. Mitchum did.

Mr. CHERTOFF. Mr. Mitchum gave you a call?

Mr. YOUNG. At some point in time we had some communication that set up the meeting.

Mr. CHERTOFF. And you knew that later that day you were going to be making your, what you imagined, or you assumed would be your final proposal, the final round of the competition with the other bidders; right?

Mr. YOUNG. It wasn't on the day of the presentation. As I recall, it was in the evening sometime.

Mr. CHERTOFF. So it was the day before?

Mr. YOUNG. Well, my recollection is I was somewhere else the day before, so I don't think it was the day before.

Mr. CHERTOFF. A couple of days before?

Mr. YOUNG. Relatively close, I think.

Mr. CHERTOFF. The important thing is this, though. It was before the final round of the competition; right?

Mr. YOUNG. That's correct. That's correct.

Mr. CHERTOFF. Mr. Mitchum said he wanted to meet with you and Mr. Myers in a hotel room; right?

Mr. YOUNG. I may not have met Mr. Myers by that time. I'm not sure he told me exactly who I was going to be visiting with.

Mr. CHERTOFF. All right. But he told you to come to a hotel room, or meeting him in a hotel room; right?

Mr. YOUNG. Right.

Mr. CHERTOFF. Who was there when you met him? Mr. Mitchum was there?

Mr. YOUNG. And Mr. Myers.

Mr. CHERTOFF. Any other bidders there?

Mr. YOUNG. Not that I—no, there weren't.

Mr. CHERTOFF. What did they tell you?

Mr. YOUNG. They told me that they had done an analysis that established that our group had the best bid for the State Police transaction.

Mr. CHERTOFF. Did they ask you to look over your analysis?

Mr. YOUNG. I did, briefly. I didn't have a chance to study it.

Mr. CHERTOFF. And I'll bet you that you agreed that your proposal was the best of all the proposals; right?

Mr. YOUNG. I knew that before I went to the meeting.

Mr. CHERTOFF. So that wasn't a hard decision for you.

Mr. YOUNG. No.

Mr. CHERTOFF. Is it common for you in a situation where you have, you know, a competition is ongoing, before the final round when the competitors are making their final arguments, to get called in by the person who is judging the competition to be told you have won?

Mr. YOUNG. Well, I don't think they said that we'd—he said we'd won. He just said, or they both said they thought we had the best proposal.

Mr. CHERTOFF. This was in a private meeting in a hotel at least a day before the final session when everybody else came to the meeting to make a presentation figuring that the deal was still wide open; right?

Mr. YOUNG. Well, it was before the meeting, and as far as I knew the deal was still wide open. We were just talking about one vote of seven potential votes.

Mr. CHERTOFF. Didn't you know that Mr. Mitchum was the person who had been—

The CHAIRMAN. Are we talking about one vote?

Mr. YOUNG. Mr. Mitchum only had one vote of all the Commissioners.

The CHAIRMAN. You mean you knew you had the other votes?

Mr. YOUNG. No. Mr. Chertoff asked me if I knew that that was conclusive about whether or not we were going to win the transaction, and I said, no.

Mr. CHERTOFF. You knew you had his vote.

Mr. YOUNG. I assumed we had his vote.

Mr. CHERTOFF. Did you know he was the one who was specifically designated as the person on the Commission with the financial expertise to kind of be the lead point person to do the analysis?

Mr. YOUNG. I am not sure I knew that he had had any formal designation, but I certainly knew he was a CPA and had that background.

Mr. CHERTOFF. So he had a lot of influence with the Commission.

Mr. Mitchum, weren't you in fact the guy who was selected by the Commissioners to kind of take the lead on doing this analysis?

Mr. MITCHUM. Not formally.

Mr. CHERTOFF. But informally; right?

Mr. MITCHUM. Yes.

Mr. CHERTOFF. Your vote carried a lot of weight; right?

Mr. MITCHUM. Probably.

Mr. CHERTOFF. Mr. Goodwin, did you do some scouting around during this period before the final presentation on May 10th to kind of find out what the head count was among the Commissioners, so you could report that to the Governor's office?

Mr. GOODWIN. I probably did, but I think I missed it.

Mr. CHERTOFF. Well, putting aside whether your head count was accurate—and I am sure there are people on this Committee who have the experience of knowing how difficult head counts can be—my question to you is: Who asked you to do that?

Mr. GOODWIN. I don't believe anyone asked me. I saw this memo just a few minutes ago—

Mr. CHERTOFF. We will put the memo up. It is a memo of May 1, 1985, from Mike Gaines to Governor Clinton and Betsey Wright. This was in the last 10 days before that final presentation where the decision was supposed to be made. Do you have that?

Mr. GOODWIN. It's the memo from Mike Gaines?

Mr. CHERTOFF. Right. Mike Gaines was the liaison between the Governor's office and law enforcement?

Mr. GOODWIN. Mike was the liaison between the Governor's office and law enforcement.

Mr. CHERTOFF. He was the guy you dealt with?

Mr. GOODWIN. Pardon?

Mr. CHERTOFF. You dealt with him on a regular basis?

Mr. GOODWIN. Yes. Yes, I did.

Mr. CHERTOFF. It says here: "The State Police Commission is meeting Friday to review proposals for financing the communications system. The following are Tommy Goodwin's observation of where things stand." Then there is a list, and it says next to Johnny Mitchum, "solidly behind Lasater." Now do you remember telling Mr. Gaines about this?

Mr. GOODWIN. No, I don't remember it but, you know, there's no doubt that I did.

Mr. CHERTOFF. And the reason you did is because you knew Mr. Gaines was interested; right?

Mr. GOODWIN. I'm not sure that it was just in general conversation. I was never asked to submit this.

Mr. CHERTOFF. Did you know that he wrote it up, that he sent it to the Governor, that Betsey Wright wrote a note at the bottom saying, "Gov, we have real problems here since "street talk" is that Lasater put in unreasonably low bid knowing he can raise it once he gets it." Did you know that was on the bottom of this memo?

Mr. GOODWIN. No, I'd never seen this memo before.

Mr. CHERTOFF. Then Betsey Wright goes on to say, "I hope Arkansas State Police has expert review everything." Mr. Myers, do you suppose you're the expert that was retained to do the review that Betsey Wright thought was important to make sure that this thing looked like it was proceeding properly?

Mr. MYERS. I don't know.

Mr. CHERTOFF. Do you know of any other experts who were hired to review this before the final decision?

Mr. MYERS. Not that I'm aware of.

Mr. CHERTOFF. You were told what Mr. Mitchum's view was before you did the review, and you were told to see whether, in fact, the decision had picked the best bid, as we've established; right?

Mr. GOODWIN. Yes.

Mr. CHERTOFF. Then it says, in Governor Clinton's own handwriting at the top, "Lasater should be 'told' bid must be priced." Mr. Goodwin, did you ever get any feedback from Mr. Gaines or Ms. Wright about the Governor's instructions that Lasater should be informed that the bid must be a real price?

Mr. GOODWIN. No, I don't recall anything like that.

Mr. CHERTOFF. Mr. Young, you know from your experience that there are sometimes bidders who think that they can put in a low-ball bid and later change it after they have the contract?

Mr. YOUNG. I've seen that occur.

Mr. CHERTOFF. Did you hear any street talk to that effect?

Mr. YOUNG. I think that at some point in time I might have heard a suggestion that—well, of course I heard somebody suggest, a fellow, with another bidder, suggest that they didn't think our interest rates were on the market.

Mr. CHERTOFF. Well, for interest rates, yes. So someone suggested your interest rates that you were figuring were not really accurate or real interest rates?

Mr. YOUNG. That's what I understood.

Mr. CHERTOFF. And that was out there? That was the street talk that you were aware of?

Mr. YOUNG. Well, I heard one person say that. I don't know what the street talk was.

Mr. CHERTOFF. Now, I want to go back to something else. As we established earlier during the first round of this, on May 10th when the final presentations were made where all the other bidders came in and they thought it was still an open issue, the decision as predicted by Mr. Goodwin to Mr. Gaines and as told to Mr. Myers by Mr. Mitchum surprise, surprise, turned out to be that the Raney/Hutton/Lasater offer was considered to be the best plan.

Mr. Myers, correct me if I'm wrong, isn't the fact that the reason they won was not because they had the lowest price, but because they had in their total concept or plan this notion of being able to kind of hold the money for awhile and invest it until they paid it out to the least investors?

Mr. MYERS. That's my recollection.

Mr. CHERTOFF. All right. That was the critical thing.

Isn't it a fact, Mr. Mitchum, that after the selection was made, some of the firms that were at the meeting requested permission to revise their proposals because they thought there had been a misunderstanding of the law? Right?

Mr. MITCHUM. That is correct.

Mr. CHERTOFF. Then we have a May 16th letter which says that, in fact, the Raney/Hutton/Lasater people did not misunderstand the law. And that was written by the law firm that was paid by the Raney/Hutton/Lasater people. Correct, Mr. Young?

Mr. YOUNG. They were paid by us, but they also drew up the law, as well, so they should understand the law.

Mr. CHERTOFF. They were paid by you to draw up the law; right?

Mr. YOUNG. They were paid for services in connection with drawing up the law; that's correct.

Mr. CHERTOFF. Which, in plain English, means they were paid to draw up the law; yes or no?

Mr. YOUNG. Correct.

Mr. CHERTOFF. So in sum, with the way this looks, this is like having a football game. You have the referee meeting with one team before the game, and the referee who makes the call that decides the game gets paid by one team, and it does not look like it is a level playing field, does it?

Mr. YOUNG. Well, I do not think that adequately states what the circumstances were. This was all done in public, and everybody knew what the legislation was.

Mr. CHERTOFF. Was your meeting in a hotel—

The CHAIRMAN. Let me tell you something, it may have been done in public, and I believe Ms. Wright that she didn't know that the Mitchell law firm was working to prepare this legislation on behalf of yourself and your group. She says, "I had no knowledge of this. None."

Now what you have is a situation where the attorney retained by yourself and the Lasater group, and I don't know if the E.F. Hutton group was part of it, was the same attorney who drew up the legislation.

Then when there was a question as it related to the propriety of someone else's bid, or them raising a question as to whether you could bid in a 6-month period as opposed to the 30 days, that is the same law firm that issues this opinion in which they, right on the top of it, say: You have asked our opinion on questions of interpretation, and then they make the interpretation.

Now if you do not see an absolute, incredible conflict there, it just jumps right out. It is obvious on its face. Here is your lawyer that you retained saying that your interpretation was OK, and that somebody else's that they shouldn't really in essence be given the opportunity to complain about that but that the law permitted them to do that. What did you think they were going to say?

Mr. YOUNG. Well, as I tried to say earlier, this particular opinion in my view was not the linchpin of the decision of who was going to get the contract.

The CHAIRMAN. Oh, I agree with you. This was used as a cover. I think the linchpin was made well before. I mean, I think you were out there rounding up votes. We have memos in the file as to who was voting. And the only people they talked about was Lasater, whether they were going to vote for Lasater or not vote for Lasater. They didn't say that they were going to vote for anybody else. This whole thing was: Will they vote for Lasater? Won't they vote for Lasater?

Give me the memo that has all that scribbling on it. "Johnny Mitchum—solidly behind Lasater." Is that true, Mr. Mitchum?

Mr. MITCHUM. Ultimately.

The CHAIRMAN. Yes. Well, this memo was written before "ultimately." This was a memo on the Governor's office on May 1st.

Mr. MITCHUM. I didn't write the memo, sir.

The CHAIRMAN. Yes, but somebody had to. Let me see. Oh, it is written by, who is this, Mike Gaines?

Mr. CHERTOFF. Mike Gaines.

The CHAIRMAN. Who is this fellow Gaines?

Mr. MITCHUM. He was the liaison from the Governor's office.

The CHAIRMAN. Liaison from the Governor's office. Do you think he made this judgment? Did he talk to you?

Mr. MITCHUM. He didn't talk to me.

The CHAIRMAN. He never talked to you?

Mr. MITCHUM. At committee meetings.

The CHAIRMAN. On or before May 1st? In other words, when he wrote this, "Johnny Mitchum—solidly behind Lasater," do you think he made that up?

Mr. MITCHUM. I don't know.

The CHAIRMAN. Do you remember talking to him?

Mr. MITCHUM. He was at committee meetings. I talked to everyone at the committee meetings.

The CHAIRMAN. Did you tell him you were behind this?

Mr. MITCHUM. He may have formed that opinion.

The CHAIRMAN. Did you tell him that you thought that the Lasater proposal was the one you were going to vote for? I mean, this is a memo to the Governor by this fellow Gaines.

Mr. MITCHUM. At some point I may have.

The CHAIRMAN. Obviously, you told him on or before May 1st. He has this written down here. You don't think he would lie to the Governor, do you? Who is this other guy?

Mr. CHERTOFF. Thompson.

Mr. MITCHUM. Tennyson.

The CHAIRMAN. Did you know Tennyson?

Mr. MITCHUM. Yes.

The CHAIRMAN. Is he a member of the committee?

Mr. MITCHUM. Yes.

The CHAIRMAN. Well, same memo, "Tennyson—Lasater."

Who is this fellow, Mashburn? Do you know Mashburn?

Mr. MITCHUM. Yes.

The CHAIRMAN. Was he on the committee?

Mr. MITCHUM. Yes, sir.

The CHAIRMAN. The memo says, "Mashburn—probably Lasater." Probably. Then there's this fellow, Gene Raff, do you know him?

Mr. MITCHUM. Yes, sir.

The CHAIRMAN. "Gene Raff—probably Lasater." The last one is "Rockefeller" and he is the only one with a question mark.

Senator Sarbanes.

Senator SARBANES. Was the controversy over the interpretation of the law a public controversy in Arkansas at the time?

Mr. YOUNG. Having to do with this letter?

Senator SARBANES. Yes, and generally how this law was to be interpreted, and the objections that one of the bidding parties made.

Mr. YOUNG. Well, I think it was reported in the newspaper, but frankly it is my recollection there was really little controversy whatsoever. This was a position or a question raised by one of eight bidders. Nobody else had this view.

Senator SARBANES. But that question was known publicly?

Mr. YOUNG. Correct.

Senator SARBANES. I yield to Mr. Cole.

Mr. COLE. Just to follow up on that, Mr. Young, the legislation that was enacted that authorized this bond issuance, that was passed by the State Legislature, as I understand it?

Mr. YOUNG. Correct.

Mr. COLE. So irrespective of what law firm did or didn't play what role in the drafting, the final legislation was a public law that was passed by the Arkansas State Legislature?

Mr. YOUNG. That is correct.

Mr. COLE. Did the other groups, the other eight underwriting teams that submitted proposals, did they have that legislation available to them, as well?

Mr. YOUNG. They certainly did.

Mr. COLE. What they had to base their bids on was the same law that your group had?

Mr. YOUNG. That is absolutely correct.

Mr. COLE. Did your group have any special advantage or special information as a consequence of having previously retained the Mitchell firm in interpreting the law?

Mr. YOUNG. We did not.

Mr. COLE. And if I understand what you are saying correctly, you are telling us that of the eight underwriting groups that submitted bids for the financing of this Police Radio System, seven of the eight interpreted the legislation in the same way?

Mr. YOUNG. That is my recollection.

Mr. COLE. The one firm that interpreted it in a different way is the first that complained and that later occasioned the letter that Senator Sarbanes referred to?

Mr. YOUNG. That is correct. It was an out-of-state firm, or a group of out-of-state firms, and frankly I think they just simply did not understand the legal issues that we were dealing with.

Mr. COLE. Is it unusual in these situations if a firm doesn't get the bid that they may—or it doesn't get the selection, I should say, that they may look for reasons to raise objections or try to reopen the selection process?

Mr. YOUNG. It is not unusual.

Mr. COLE. So basically you had a disappointed group here—

Mr. YOUNG. Right. Right.

Mr. COLE. —looking for a reason—

Mr. YOUNG. Right. Absolutely correct.

Mr. COLE. —to second-guess.

Turning to you, Mr. Mitchum, I think, Mr. Chertoff has placed a very heavy responsibility on your shoulders because he has suggested that all of the other members of the Commission relied primarily or largely on you in this selection process. So I think we should spend a little time looking more carefully than has been done so far as what you actually did and why you did it. Just for background information, what is your professional training, if any?

Mr. MITCHUM. CPA.

Mr. COLE. You are a Certified Public Accountant?

Mr. MITCHUM. Correct.

Mr. COLE. Did you undertake any financial analysis on your own of the various proposals that were submitted?

Mr. MITCHUM. Correct.

Mr. COLE. So on your own time as a CPA you looked at these proposals and tried to determine which one was the best proposals for the State?

Mr. MITCHUM. That's correct.

Mr. COLE. Did anyone direct you to do that?

Mr. MITCHUM. No.

Mr. COLE. Is this something you did kind of outside of normal business hours, outside of normal Commission meetings?

Mr. MITCHUM. I felt it was my fiduciary duty as a public servant.

Mr. COLE. Did anyone from the Governor's office tell you that you should do any kind of analysis, or do any kind of comparison that would favor Lasater & Company or their group?

Mr. MITCHUM. Absolutely not.

Mr. COLE. So this was something that you undertook on your own in an effort to evaluate the proposals.

Mr. MITCHUM. That's correct.

Mr. COLE. Leaving aside the Governor's office, when you began this process did you have any pre-conceived bias or favoritism toward any of the bidders in the process?

Mr. MITCHUM. No, I did not.

Mr. COLE. Did you have an open mind?

Mr. MITCHUM. Yes, sir.

Mr. COLE. What exactly did you do when you compared the various bids that had been submitted?

Mr. MITCHUM. I think the first thing I looked at was the concept. Then I ran the numbers of the various proposals that more or less corroborated that.

Mr. COLE. I take it that these proposals were fairly complex, at least as to the financial details of what each bidder was proposing?

Mr. MITCHUM. Fairly complex.

Mr. COLE. Did your expertise and training as a CPA help you in evaluating them and comparing, I would say, apples to apples rather than apples to oranges? Is that what you tried to do?

Mr. MITCHUM. It helped some, but at that time nor now am I an expert in bond financing.

Mr. COLE. So I take it that, even though you performed your own analysis, you wanted to backstop that with someone else's view, and that is why you turned to Mr. Myers and retained him?

Mr. MITCHUM. That is correct.

Mr. COLE. Again, is that something that someone directed you to do? Or did you do that at your own initiative?

Mr. MITCHUM. I asked my lawyer if he knew of someone, an enrolled actuary, who could run the numbers, and he recommended Mr. Myers.

Mr. COLE. If I understand what happened here, you would have wanted an actuary because what we were dealing with would be a series of financial events that would occur over a period of many years as these bonds were issued and then repaid, and what you wanted to do was bring them all back to what I think professionals call "present value" and compare the present value of each bid?

Mr. MITCHUM. That is correct.

Mr. COLE. You turned to Mr. Myers for that?

Mr. MITCHUM. That is correct.

Mr. COLE. Did you have any reason to believe that Mr. Myers would favor one firm over another?

Mr. MITCHUM. Absolutely not. I had never met Mr. Myers before this.

Mr. COLE. I guess there's some confusion or difference of recollection, which I think is not surprising considering the fact that we are dealing with events of 11 or more years ago, that although you do remember that you had made up your mind, or in your preliminary analysis you had come to the conclusion that the Raney/Hut-

ton/Lasater group had the best bid, and you had reached that preliminary view at the time you retained Mr. Myers?

Mr. MITCHUM. Say that again, sir?

Mr. COLE. Based on the preliminary analysis that you performed before you retained Mr. Myers, had you come to a preliminary view that the Raney/Hutton/Lasater group seemed to have the best proposal?

Mr. MITCHUM. That is true.

Mr. COLE. Now as I understand your testimony, while you do not recall telling Mr. Myers you had come to that conclusion, you do not dispute the fact that that was the view you had when you retained him?

Mr. MITCHUM. We have a slightly different memory on that. I don't recall telling Mr. Myers how I had rank-ordered the——

Mr. COLE. The various bids. I guess, Mr. Myers, your recollection is that Mr. Mitchum did indicate that he had preliminarily concluded that the Raney/Hutton/Lasater bid was the most favorable?

Mr. MYERS. I believe so.

Mr. COLE. But what I think is the important question here, and I guess this goes more to you, Mr. Myers, is: Did Mr. Mitchum direct you to come to any particular conclusion in your analysis?

Mr. MYERS. No.

Mr. COLE. So even though he may have mentioned that as he had run the numbers it looked like this bid was the best deal for the people, he didn't tell you that you should come out in the same place?

Mr. MYERS. No, he did not.

Mr. COLE. In fact, although to me the difference seems to be negligible, when you did your present-value analysis you didn't put the Raney/Hutton/Lasater group as first? Is that correct?

Mr. MYERS. Yes, that's correct.

Mr. COLE. The difference, I think, was \$28,000? Am I recalling correctly?

Mr. MYERS. It looks like that. It's not clear here, but it looks like \$28,000; \$101,000, \$73,000, \$28,000 difference.

Mr. COLE. And that difference proportionate to the entire transaction that we are talking about, how material was that?

Mr. MYERS. \$28,000 was de minimis. It had no actual bearing upon the outcome.

Mr. COLE. So essentially from a mathematical perspective, at least, these bids were practically identical? Am I understanding you correctly?

Mr. MYERS. The top two bids; yes, to the best of my recollection.

Mr. COLE. Just to close this out, Mr. Young, when you had an opportunity to review the analysis that Mr. Myers had done, did you feel that it had failed to take into account a particular aspect of the bid that your group had submitted?

Mr. YOUNG. Actually, I did not feel like it gave us the advantage that I thought that we had. I had reviewed all the proposals myself and had looked at this particular proposal, and I don't think I really felt like it was as close as he presented. We had in our structure some funds that were invested that would generate a benefit that frankly I thought were not adequately weighed in his analysis.

Mr. COLE. Oh, so you had actually done your own comparison of the eight bids?

Mr. YOUNG. Right.

Mr. COLE. Well, I know Mr. Chertoff dismissed what your view would have been because he seemed to think that it was a foregone conclusion that you would have felt that your bid was the best, but let me ask you this. If you had seen something in one of those other bids, a concept, a financing method that you didn't have in your bid that made someone else's bid better, I take it that is something you would have sat up and taken notice of?

Mr. YOUNG. Right. I had them all ranked, as well. I had us as number one, and I had the other bid as number four, of the four that made presentations.

Mr. COLE. So your analysis then confirmed Mr. Myers' analysis?

Mr. YOUNG. Well, to the extent that his reflected that any other bid was better than ours, it wasn't consistent. Mine would have shown a much greater advantage. But at any rate, to the extent that his analysis supported ours as the best bid, I certainly agree with it. And I think he did some other calculations with the different interest assumptions that actually showed that our numbers, present-value wise, were even better than theirs. It really just depended on what assumptions were made in that analysis.

Mr. COLE. Mr. Mitchum, under these circumstances where you have two bids that from a financial perspective are identical or practically identical, would it have been within the discretion of the Commission to choose either bid that they thought was best?

Mr. MITCHUM. Yes.

Mr. COLE. I take it that there would have been nothing wrong with the Commissioners considering the involvement of two local firms in one of the bids?

Mr. MITCHUM. That's correct. In fact, we liked the idea of having more than one firm involved because of the diversity.

Mr. COLE. So the issue that has been raised about whether there was a \$28,000 difference between these two bids is probably not something that would have affected the final selection process?

Mr. MITCHUM. That is correct.

Mr. COLE. What was the final vote on this among the Commissioners?

Mr. MITCHUM. I do not recall. It was a split vote. I think it was 4 to 3.

Mr. COLE. Who voted for the proposal, if you can recall? Obviously, I think, you said that you did.

Mr. MITCHUM. Correct. Commissioner Wyn Rockefeller.

Mr. COLE. Mr. Rockefeller is the son of the——

Mr. MITCHUM. The former Governor.

Mr. COLE. Former Governor who was a member of the Rockefeller family?

Mr. MITCHUM. That's correct.

Mr. COLE. Rockefeller Center in New York, et cetera?

Mr. MITCHUM. That's correct.

Mr. COLE. So one would assume he had some financial acumen?

Mr. MITCHUM. That's correct. He's also a Republican—very much a Republican.

Mr. COLE. And an appointee of Governor White, the Republican Governor?

Mr. MITCHUM. That's correct.

Mr. COLE. So he voted for the proposal?

Mr. MITCHUM. Yes.

Mr. COLE. Who were the other two who voted in favor?

Mr. MITCHUM. I don't recall right now.

Mr. COLE. What about the Commissioners who voted against the Raney/Hutton/Lasater proposal?

Mr. MITCHUM. I believe those were Commissioner Raff and, let's see—I'm sorry. I don't recall.

Mr. COLE. Was it Commissioner Mashburn? Did he vote against?

Mr. MITCHUM. It was Commissioner Mashburn. Thank you.

Mr. COLE. Who had appointed those two Commissioners?

Mr. MITCHUM. Those were Clinton appointees—no, let's see. I don't know, I don't recall.

Mr. COLE. You think it was maybe the Clinton appointees who voted against the proposal, and the Governor White—

Mr. MITCHUM. Yes, I have heard someone say that. I have never stopped to think about it, but I believe the Republican appointees all voted for the Raney/Hutton/Lasater proposal, and all of the Democratic appointees did not.

Mr. COLE. That would suggest there was not a unified front among the Clinton group. On that point, Mr. Young, did you have contacts with some staff members of the Clinton Governor's office before you actually submitted your final proposal?

Mr. MITCHUM. Early on in the process I think I met with Sam Bratton back in 1984. You're talking about—the question was, did I meet with anybody on the Governor's staff?

Mr. COLE. Yes, when the legislation was first being contemplated and the idea of bond financing?

Mr. MITCHUM. Right. Right. I met with Sam Bratton, I think, in connection with work at the Legislature when the legislation was going through the State Legislature, there were some meetings, at least one meeting, where there was a Governor's staff representative there.

Mr. COLE. Do you recall a gentleman named Bobby Roberts?

Mr. MITCHUM. Bobby Roberts was a fellow that worked for the Governor up until I think the end of 1984, and he actually was the person that first mentioned this particular transaction to me.

Mr. COLE. So your first knowledge of this transaction was from Mr. Roberts?

Mr. MITCHUM. Right. As I understood his role, he was involved with coordinating Criminal Justice matters for the Governor's office, a matter that was taken up by I think maybe Mr. Gaines.

Mr. COLE. What about a gentleman named David Mosley?

Mr. YOUNG. David Mosley was the State Police Fiscal Officer, the finance person at the—

Mr. COLE. Did you talk with Mr. Mosley about this financing at some point?

Mr. YOUNG. Yes, I did. As I recall, when I became aware of it by conversation with Bobby Roberts, I met with Mr. Mosley shortly thereafter.

Mr. COLE. Last question, if I could, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. COLE. In any of your discussions with either Mr. Bratton, Mr. Mosley, or Mr. Roberts, all of whom were on Governor Clinton's staff, did any of them indicate to you that this work should go to the Lasater group?

Mr. YOUNG. No, they did not.

Mr. COLE. They did not express any preference for one underwriter or another?

Mr. YOUNG. No.

Mr. COLE. Thank you.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I find this last exchange very interesting because there's a piece of information I hadn't had before that came out; and, you know, I have to comment on it.

Mr. Mitchum, you tell us it's a very clear call. You make the call entirely on the basis of its merits, but to double check, you give it to Mr. Myers. Mr. Myers, you examine it and say it's a very clear call. Mr. Young, you tell us you're number one and everybody else is number four, and the final vote is four to three?

There's a sudden disconnect here. If this is so clear and so obvious, why isn't the final vote unanimous? Why isn't it seven zip? The final vote is four to three.

Obviously, from the memo that Mr. Chertoff talked about, the Governor was concerned about the outcome and about the vote. Why else does the Governor have a legislative liaison or a liaison man send him a memo telling him where things are going?

Now the guy did not count very well because according to his memo, "Simpson—appears to have switched from another vendor to Lasater. Mitchum—solidly behind Lasater. Dennison—Lasater. Mashburn—probably Lasater. Raff—probably Lasater." Rockefeller is the only one he doesn't know about. And they don't vote that way. It's four to three. It's a very close issue.

The Governor's personal secretary says we have a real problem because the street talk is that Lasater's buying his way in here.

Mr. Chairman, I just find a disconnect in all of this that doesn't fit the picture. If indeed the vote had been seven to nothing, I'd say, yes, Mr. Young, you won it entirely on the basis of the merit. You convinced everybody. Mr. Mitchum, you saw that it was clearly that way from a completely unbiased fashion. Mr. Myers backed you up and the Commission all went along with you.

Then the case would be, was it that much better because Mr. Lasater was able to move some things around so you had some inside help in putting together a better proposal. But there are at least three out of these seven Commissioners that didn't think you had the better proposal and went some place else.

I'm just completely surprised to discover that, as a result of this last information. Can anybody help me understand why three Commissioners voted for somebody else, given what you've told us is the obvious superiority of your bid?

Mr. Young, I'd be happy to hear your comments.

Senator SARBANES. Before we get too far down that path, I understand from records we have that the vote was four to two. I mean, you can still make the general point, but I think we at least ought to get that particular fact——

Senator BENNETT. Obviously, I want the vote to be accurate, and I appreciate the Senator's making—let's have it accurate.

Senator SARBANES. I understand it was four to two.

The CHAIRMAN. Mr. Mitchum, were you the Chairman of this selection committee?

Mr. MITCHUM. No, sir.

The CHAIRMAN. What was your role?

Mr. MITCHUM. Just a member of the committee.

The CHAIRMAN. Just a member. Do you recall why the other two, or what the indications were? Did you have discussions about this? You didn't just all come in there and vote one after the other. You talked about this, didn't you?

Mr. MITCHUM. You mean previous to the vote?

The CHAIRMAN. Sure.

Mr. MITCHUM. Of course.

The CHAIRMAN. So, can you enlighten us? Can you give us some information as to how it was that the other two members voted against, and what happened to the seventh member?

Senator BENNETT. Well, four to two, there are only six names listed here, and I think four to two is better, someone's memory was wrong in four to three and that's fine. But I'm glad to have that clarified because in all of the exchange between the Counsel for the Minority and the group, it was always four to three. I'm glad to have Senator Sarbanes make it clear it's four to two.

The CHAIRMAN. Could you answer the question?

Mr. MITCHUM. Yes, sir.

The CHAIRMAN. The Senator brings up a very interesting point.

Mr. MITCHUM. Commissioner Raff, if I recall correctly, had an objection to the Raney/Hutton/Lasater group because of the national negative publicity that the E.F. Hutton firm had received in recent months.

The CHAIRMAN. Who was the other Commissioner, if you recall, who voted no?

Mr. MITCHUM. That would have been Commissioner Mashburn.

The CHAIRMAN. Do you recall what his feelings were?

Mr. MITCHUM. No, sir, I do not.

The CHAIRMAN. I don't know whether staff has interviewed the other Commissioners. I think they should make an effort to ascertain, whether by informal inquiry or by deposition, but I certainly think they should have ascertain what the——

But you don't recall speaking to Mashburn, or what if anything he said?

Mr. MITCHUM. No, sir.

The CHAIRMAN. Mr. Goodwin, do you?

Mr. GOODWIN. Yes, sir, I recall it.

The CHAIRMAN. Could you share that with us? I'd appreciate it.

Mr. GOODWIN. I think from the beginning, from the time we received the proposals, both Raff and Mashburn were against the proposal, as Mr. Mitchum said, because of the publicity that E.F. Hutton had gotten in the past. And they stayed with that through-

out the entire period. The seventh vote was the vote of the Chairman, which was not necessary, since it had already passed.

The CHAIRMAN. Who was the Chairman, if you recall?

Mr. GOODWIN. It was Willie Simpson.

The CHAIRMAN. Do you have any idea how Mr. Simpson felt?

Mr. GOODWIN. No, nothing other than what I read on this.

The CHAIRMAN. On this memo?

Mr. GOODWIN. On this memo.

The CHAIRMAN. This is the first time you're aware of this memo.

Mr. GOODWIN. That apparently was my opinion.

The CHAIRMAN. Senator Bennett, if you have any more?

Senator BENNETT. I don't have the data to pursue it further, but I just was struck by the difference between the impression that was built in the first round that says this is all done entirely on the merits, and then an obvious concern on the part of the Governor to the point that a memo is submitted to the Governor and added to by the Governor's personal assistant, stressing the concern about Lasater to the point that the Governor himself says Lasater has to be told this thing must be kosher.

Then the fact that the Commissioners vote against Lasater says to me that the suggestion that everything was wonderful and entirely on the up and up and without any political influence or even concern is simply not an accurate summary of where things were here. I think we have a legitimate reason to be concerned.

I thank the Chair.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Colonel Goodwin, the answer you just gave actually raises a question in my mind because I gather that there was discussion on the Commission about the integrity of the character of the various bidders. In particular, you mentioned Hutton, they were concerned because there was publicity about a problem with checks I think at Hutton; right?

Mr. GOODWIN. Yes, I believe that's right.

Mr. CHERTOFF. Was there discussion about Mr. Lasater's cocaine activities?

Mr. GOODWIN. I don't recall any discussion about Lasater. Gene Raff was a prosecuting attorney and he and Mr. Mashburn, James Mashburn, both, as I said before, from the beginning opposed Hutton, and I don't think they opposed any other part of the—they just did not want Hutton's name there because they had been prosecuted and I think found guilty of a fraud charge involving check kiting or some such thing.

Mr. CHERTOFF. Yes, but if I remember back in the days when I prosecuted, if there's one thing prosecutors hate more than financial fraud, it's drug activity. You know from your own experience in the State Police and certainly Mr. Raff had to know as a prosecutor, you don't get drug distribution if people don't buy the drugs; right? I mean, that's what drives the whole thing. And you've testified that it was kind of common knowledge that Lasater used drugs and, contrary to the suggestion made earlier, he wasn't just some guy working in the firm. He owned the firm.

So I guess my question is, since we now know, at least in the minds of two Commissioners, the turning point, the critical issue was whether there was a check problem an integrity issue at Hut-

ton, you didn't bring up or no one brought up the question of well, yes, but the other guy in the package, you know, he's using cocaine, and we are wondering whether he's in fact going to get arrested. Wasn't that exactly the kind of issue that these two Commissioners would have wanted to know about?

Mr. GOODWIN. You know, I don't know. I know that if I had been a Commissioner in a Commission meeting like that, I may have not brought up Mr. Lasater's name, and I think the difference to me, at least, would be that Hutton was charged and convicted, and I still say that's what Mr. Raff was going on, and Mr. Mashburn was with him.

Mr. CHERTOFF. Yes, but you knew, you knew, and there was testimony in Federal Court, 6 miles down the road that Lasater was involved with this stuff.

What I am getting at is that there's not any, although you are asked, not to find out is the guy using drugs or distributing drugs; and he was, by the way, for the record, eventually convicted for distribution, conspiracy to distribute drugs; right?

Mr. GOODWIN. Yes, but not the way I know it. Very few people give it away. That was the distribution.

Mr. CHERTOFF. Yes, he gave it away to business associates and to women because it helped him with whatever he was doing; is that right?

Mr. GOODWIN. And employees, yes.

Mr. CHERTOFF. He gave it to his employees, kind of like a drug bonus.

Mr. GOODWIN. That's right.

Mr. CHERTOFF. It's a felony and he got 30 months in jail, and it's called conspiracy to distribute narcotics; right?

Mr. GOODWIN. Yes.

Mr. CHERTOFF. All right. You're asked by the Governor, find out if Lasater uses drugs because we don't want a guy who is using drugs, who is buying cocaine, let alone distributing it, who's buying cocaine to get a contract? You're asked is he going to get arrested, is he going to get caught using drugs?

Now we find out that there's two other Commissioners who were so concerned about integrity that they actually weren't going to vote against Hutton which is a nationally-known firm that does business all over the world because of this check thing, but nobody, despite this trial going on and all the knowledge about the drug use, nobody ever says in a meeting, let alone you, Colonel Goodwin, "I have to tell you guys, you know, Lasater has a reputation about drugs. At least let's check it out. Let's check out whether it's true that he uses drugs." None of that came, you didn't feel the need to bring that up?

Mr. GOODWIN. I think it probably was brought up but not in open meetings.

Mr. CHERTOFF. If it was brought—

Mr. GOODWIN. I think that Commissioner Simpson and I had a conversation about that.

Mr. CHERTOFF. What was the conversation?

Mr. GOODWIN. The conversation's real fuzzy. I can't remember except that we discussed it.

Mr. CHERTOFF. Now, we are getting somewhere because now we know that the Chairman of the Commission did have some kind of a conversation with you about Lasater's drug activities.

Mr. GOODWIN. If I am not mistaken, and I don't think I am, I believe in the open meeting, that he did discuss it.

Mr. CHERTOFF. He discussed Lasater's drug use in an open meeting at the State Police Commission?

Mr. GOODWIN. That's what I think I remember.

Mr. CHERTOFF. What was the discussion?

Mr. GOODWIN. I don't know. What else could you discuss, he's a cocaine user. That's what everybody says. He's never been caught. In everybody's mind, they know that he, that he's a user.

Mr. CHERTOFF. I have to tell you, you have just told us that one of the Commissioners was a prosecuting attorney and at an open meeting, the conversation was, "yes, he's a drug user but he's never been caught." These guys are absolutely adamantly against Hutton and they have, like the drug stuff just totally not an issue.

Colonel Goodwin, was there a doubt in your mind at that time that the reason there was a drug distribution problem in Arkansas, like in everyplace else in the country, was because people buy the drugs. If people buy drugs and if they are wealthy people and they can buy alot of drugs and they use money that they earned to buy drugs, they are promoting drug activity. Was there any doubt in your mind that that was the case in Arkansas in 1984 and 1985?

Mr. GOODWIN. You are talking about—concerning Lasater in particular?

Mr. CHERTOFF. I am saying concerning in general your understanding.

Mr. GOODWIN. Generally, yes, I'd say—

Mr. CHERTOFF. You understood that people who buy a lot of drugs are promoting drug activity; right?

Mr. GOODWIN. Sure.

Mr. CHERTOFF. In this discussion at the meeting about Lasater as a person who buys drugs and uses drugs but he hasn't been caught, you're telling us that the people who raised the issue about Hutton and the checks, nobody ever raised a peep about Lasater. Can you tell us why that is? Why that just was of no interest to anybody?

Mr. GOODWIN. No, I can't.

Mr. CHERTOFF. I can't either.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Mitchum, were these hearings open hearings of the Commission?

Mr. MITCHUM. Yes.

Senator SARBANES. Well, I'm looking at the minutes of the meeting of May 10th, it said, during the presentation of Raney/Hutton/Lasater, they were questioned concerning the Federal charges of fraud against the Hutton firm.

Mr. Steve Clayburne, a Senior Vice President and Manager of Hutton's Houston, Texas, Public Finance Division told the Commission that the practices which resulted in the charges occurred 3 years ago and were stopped immediately when discovered. Then he went on and said, you know, he stated the company's reputation had not been damaged by the publicity, told of two large bond is-

sues in which they had recently been involved, and that the companies had more than enough money allotted for restitution payments in relationship to their capital base. So that was a matter of some discussion, I take it, at this meeting, is that right?

Mr. MITCHUM. Yes, sir.

Senator SARBANES. Commissioners Raff and Mashburn were the ones who were questioning this bidding group because of the Hutton presence. Is that correct?

Mr. MITCHUM. That's correct.

Senator SARBANES. And in the end, they were the two who voted against it?

Mr. MITCHUM. That's correct.

Senator SARBANES. Now were representatives of all of the firms present there at this meeting?

Mr. MITCHUM. I assume they were, yes, sir.

Senator SARBANES. Well, it says, after all proposals were presented, they were presented by the bidding groups, it says the Commission entered into a discussion of the proposals with representatives of all firms present.

Mr. MITCHUM. Yes, sir. I have not read these minutes in a few years.

Senator SARBANES. Yes. Were you there, Mr. Young?

Mr. YOUNG. Yes, I was.

Senator SARBANES. Is that the way it took place?

Mr. YOUNG. Yes. Everybody that made a presentation was at that meeting.

Mr. COLE. Mr. Portnoy.

Mr. PORTNOY. Mr. Young, do you have a copy of the legislation that authorized the sale of the bonds?

Mr. YOUNG. Do I have a copy?

Mr. PORTNOY. Did the Majority provide you with one? If not, we can.

Mr. YOUNG. Let's see. Yes, yes, I do.

Mr. PORTNOY. If you could look at the fifth page of the legislation and the first full paragraph, or the first paragraph beginning on that page, there's a sentence beginning "Payments to cover . . .?"

Mr. YOUNG. Yes, I see that.

Mr. PORTNOY. I take it, sir, that that's the phrase in this legislation that's been the subject of some discussion here today?

Mr. YOUNG. That's what I understand.

Mr. PORTNOY. I'll read it for our audience, the legislation states that: "Payments to cover the costs under the lease agreement shall be paid from the lease fund on a monthly basis." And you stated that the First Capital proposal misunderstood that language?

Mr. YOUNG. Yes, I think they did.

Mr. PORTNOY. Could you explain the manner in which they misunderstood the language of the act?

Mr. YOUNG. In their proposed structure, as I recall, the State Police would make monthly payments that didn't involve another step through which they would go through to ultimately get to the bond holders.

In our particular proposal, for example, the monthly payments would have gone into a bond fund, or a fund that would accumulate

the monthly payments for payments to bond holders on a 6-month basis, every 6 months.

Mr. PORTNOY. Let me ask that question in reverse. Could you explain perhaps in a little more detail how it is that your proposal complied with this provision without making actual monthly payments to bond holders?

Mr. YOUNG. Well, the legislation simply didn't require any particular way that payments were made to bond holders. The legislation dealt with an issue that's important under Arkansas law and that simply is the flow of the funds, how do the funds get from where they are collected by the State to the designated purpose. It wasn't intended in a way to ultimately control the structure of the financing that was offered to bond holders.

Mr. PORTNOY. You testified just a moment ago that your proposal made payments semiannually, I believe?

Mr. YOUNG. That's right.

Mr. PORTNOY. Whereas, the First Capital proposal made payments monthly?

Mr. YOUNG. That is correct, and you're talking about payments to bond holders. Ours also required monthly payments to a fund that ultimately would go to bond holders.

Mr. PORTNOY. Now that fund to which your proposal required monthly payments was a fund controlled and owned by the State of Arkansas, was it not?

Mr. YOUNG. That is correct. I think that's the lease fund that's referred to in here.

Mr. PORTNOY. So the State of Arkansas retained control of the moneys for longer under your proposal?

Mr. YOUNG. That is essentially correct.

Mr. PORTNOY. And the State could invest those moneys?

Mr. YOUNG. That is correct.

Mr. PORTNOY. And the State could receive a higher interest rate on its investment than it was paying to bond holders?

Mr. YOUNG. It could.

Mr. PORTNOY. Is that a concept known as interest rate arbitrage or debt arbitrage? Have you heard those terms?

Mr. YOUNG. Arbitrage generally refers, at least in the bond sense, to the opportunity to invest moneys at a yield that's higher than what the cost is.

Mr. PORTNOY. So would it be fair to say that your proposal made use of essentially arbitrage to lower the State's borrowing costs?

Mr. YOUNG. That's essentially correct.

Mr. PORTNOY. The First Capital proposal failed to take advantage of that for a basic investment banking concept?

Mr. YOUNG. That was my view of their proposal.

Mr. PORTNOY. Was it common to structure a deal in this fashion?

Mr. YOUNG. In 1985, it certainly was.

Mr. PORTNOY. My understanding is that there was a provision in Federal tax law which permitted the State to invest funds that it received in the issuance of tax exempt securities and that those provisions later changed?

Mr. YOUNG. That's correct. Federal law changed in 1986 that required that if, for example, a municipality or a State borrowed it

at an 8 percent rate and they couldn't turn around and invest at 10 and keep that additional 2 percentage points.

Mr. PORTNOY. So would it be fair to say that this practice was sufficiently common that the Federal laws governing it were changed shortly after this deal closed?

Mr. YOUNG. Well, of course, even in 1985, you couldn't—there weren't unlimited opportunities. You just couldn't go out and issue debt and put it in a bank and make a profit. But there were certain things that you could invest it in unrestricted yield, particularly at least the construction fund until it was spent, or the reserve fund that was established or, for example, as you mentioned the bond funds used to accumulate the payments.

Mr. PORTNOY. Was it also common practice at the time for bonds issued by State agencies to provide for semi-annual interest payments?

Mr. YOUNG. Yes. In my experience, most bonds do require, provide for semi-annual payments to bond holders. In the leasing business, it is not unusual if, for example, a borrower wants to finance, or a State borrower, municipal borrower wants to finance an item, they may do so in a lease transaction that might ultimately provide for monthly payments to the investor. But as I said earlier, that was not required in this particular legislation, and I think that is why the other bidder was confused about what this might involve.

Mr. PORTNOY. So there was nothing unusual about the payment schedule in your proposal?

Mr. YOUNG. Absolutely not.

Mr. PORTNOY. In fact, if anything, it was the First Capital proposal that was unusual?

Mr. YOUNG. In my recollection, it was the only one that required that particular structure.

Mr. PORTNOY. Thank you, sir.

Mr. MYERS, what's an Enrolled Actuary?

Mr. MYERS. An Enrolled Actuary is someone who has met the requirements imposed by ERISA. The Employment Retirement Income Security Act of 1974 imposes certain education and experience requirements so that you can be certified. You sign off on the actuarial statements that cover the funding for qualified retirement plans.

Mr. PORTNOY. Maybe you could explain in a little more detail, what an actuary does?

Mr. MYERS. The actuary calculates your insurance premiums, how much you're going to pay, based upon statistical analysis, mortality, he calculates the cost of your automobile insurance premiums, based upon what statistics indicate the ratio of accidents are in your given locale and sex and age, et cetera.

In the pension case, you calculate the contribution amounts that the employer needs to put into the plan to pay for the benefits that have been promised to his employees under the terms of the plan.

Mr. PORTNOY. Would it be a fair summation to say that actuaries do statistical analyses?

Mr. MYERS. Yes.

Mr. PORTNOY. Is that what you did in this instance, sir?

Mr. MYERS. I don't think it's statistical analysis. I just did a present value study, I believe, looking at what's here and what my memory says.

Mr. PORTNOY. Well, this would be a good time, sir, perhaps to give you what I think might be a clearer copy of the work that you performed back in 1985.

Mr. MYERS. That would be nice.

Mr. PORTNOY. If you could give Mr. Myers a copy? Does this look familiar to you, sir?

Mr. MYERS. Yes.

Mr. PORTNOY. Does it look familiar to you, Mr. Mitchum?

Mr. MITCHUM. Yes, it does.

Mr. PORTNOY. Do either of you have any reason to believe this is not the document that Mr. Myers prepared back in 1985?

Mr. MITCHUM. No.

Mr. MYERS. I believe that this is my document, yes.

Mr. PORTNOY. Sir, I would draw your attention to the cover sheet, which is entitled "State Police Communication Bid Analysis." Is that a summary of the work you did?

Mr. MYERS. Yes.

Mr. PORTNOY. If you look at the first entry, I believe it lists First Capital Corporation and a cost of \$18,073,030; is that correct?

Mr. MYERS. Yes.

Mr. PORTNOY. Was that cost actually the net present value calculation?

Mr. MYERS. Yes. Under that heading it says present value study.

Mr. PORTNOY. What is net present value in this context?

Mr. MYERS. That's the discounted value of a stream of payments that are to be received at some future point in time.

Mr. PORTNOY. And would it be fair to say that this figure is what the bond underwriting would cost the State of Arkansas in 1985 dollars?

Mr. MYERS. Yes.

Mr. PORTNOY. The second entry is the Raney/Hutton/Lasater proposal, and that lists a cost or a net present value of \$18,101,700.

Mr. MYERS. That's correct.

Mr. PORTNOY. So the difference between those two proposals is approximately \$28,000?

Mr. MYERS. Twenty-eight thousand dollars, yes, sir.

Mr. PORTNOY. Out of more than \$18 million?

Mr. MYERS. That's correct.

Mr. PORTNOY. Have you had occasion to calculate what that difference is in percentage terms?

Mr. MYERS. Umm—

Mr. PORTNOY. Don't even try.

Mr. MYERS. It's a few basis points.

Mr. PORTNOY. Fortunately, I have a calculator and I came up with fifteen one-hundredths of 1 percent. I believe you characterized that difference earlier as?

Mr. MYERS. De minimis.

Mr. PORTNOY. De minimis or infinitesimal. Would you agree with that characterization, Mr. Mitchum?

Mr. MITCHUM. Yes, I would.

Mr. PORTNOY. Is there anybody who would disagree that for purposes of a bond underwriting that the difference between these two proposals is effectively zero in price?

Mr. MITCHUM. Correct.

Mr. PORTNOY. Now turning to the second numbered portion of this first page, Mr. Myers, it says, "Other Considerations—A. Timing of Payments. First Capital's bid requires the State to make payments immediately. The Hutton/Lasater bid's first payment is not due until the 13th month. The State thus has the use of the driver's license revenue for a longer period which further serves to reduce the cost." Does that, in effect, confirm what Mr. Young was saying about their proposal, sir?

Mr. MYERS. Yes, it does.

Mr. PORTNOY. So would it be your view that the \$28,000 difference we discussed, which we've already established is essentially nothing, does not even include this factor which makes the Raney proposal less expensive for the State?

Mr. MYERS. I believe the calculations that I did reflect the discounting in the use of the State for that money. I think that's just the opposite of what you said.

Mr. PORTNOY. I believe Mr. Mitchum testified in his deposition that he had a different understanding, that the numbers that you came up with did not reflect the arbitrage opportunities that were available to the State under the RHL proposal. Is that your recollection?

Mr. MITCHUM. I believe I was incorrect on that.

Mr. PORTNOY. So that was your understanding at the time, though, sir?

Mr. MITCHUM. Right.

Mr. PORTNOY. Thank you.

The CHAIRMAN. Do we have any more?

Mr. CHERTOFF. Two quick questions.

The CHAIRMAN. Two quick questions.

Mr. CHERTOFF. I just want to be clear. We are clear now finally I guess, Mr. Young, when we look at Mr. Myers' analysis, that the First Capital bid, in terms of cost, was lower than the Raney/Hutton/Lasater bid; right?

Mr. YOUNG. That's correct.

Mr. CHERTOFF. And the difference boils down to this complicated issue involving arbitrage where lawyers can debate until the cows come home about whether the statute allows you to hold back the money to do that or not; right? But what we do know, Mr. Young, is that it all boiled down to the opinion that the law firm issued, that's Jim Guy Tucker's law firm issued that said that it was OK to hold back the money and do this arbitrage.

We also know that this law firm was the law firm that drafted the legislation and was paid by your syndicate and that offered this critical opinion that turned a losing bid into a winning bid. We know that; right?

Mr. YOUNG. Well, I don't think I agree with your characterization that that was what won the bid for us, but—

Mr. CHERTOFF. This is what Mr. Myers, the quote "independent person" prepared. Because if you look, it's right on, you can't, I mean, this thing doesn't lie. This was made up at the time.

In just plain black and white, First Capital comes in first with the lowest cost, but the consideration that turns it is this notion of the Raney/Hutton/Lasater bid holding back the money. And that all boils down to how you read that legislation. The people who read the legislation were bought and paid for by Mr. Lasater. I mean, that seems to me to be the sum and substance of it. You can't deny any more that Mr. Lasater and your firm and the Hutton firm together did, in fact, pay the lawyers who rendered the opinion that allowed this arbitrage deal with the money; right? You guys paid the lawyers?

Mr. YOUNG. I think I would agree that we paid the lawyers for their services.

Mr. CHERTOFF. OK.

The CHAIRMAN. No further questions.

Senator SARBANES. Mr. Goodwin, you are now the retired former Director of the Arkansas State Police?

Mr. GOODWIN. Yes, sir.

Senator SARBANES. Is the Director the top job in the Arkansas State Police?

Mr. GOODWIN. Yes, 13 years.

Senator SARBANES. You were the Director for 13 years beginning when?

Mr. GOODWIN. Yes, sir, 1981 and retired in 1994.

Senator SARBANES. Were you with the State Police before that?

Mr. GOODWIN. Yes, sir.

Senator SARBANES. How long were you with the Arkansas State Police?

Mr. GOODWIN. For 25 years prior to that.

Senator SARBANES. Prior to becoming the Director?

Mr. GOODWIN. Yes, sir.

Senator SARBANES. So you had a total of 38 years with the Arkansas State Police?

Mr. GOODWIN. That's correct.

Senator SARBANES. Are you appointed by the Governor?

Mr. GOODWIN. Yes, I am.

Senator SARBANES. For a term or for an unlimited period? How does that work in Arkansas?

Mr. GOODWIN. Normally with a change of Governor, the Director will change. It's his option.

Senator SARBANES. Who appointed you as Director?

Mr. GOODWIN. Frank White.

Senator SARBANES. Governor White appointed you.

Mr. GOODWIN. Yes, sir.

Senator SARBANES. Was it open to Governor Clinton to replace you? Under the law, could he have done that?

Mr. GOODWIN. He could have done that, yes.

Senator SARBANES. But he did not, he retained you as Director?

Mr. GOODWIN. That's correct.

Senator SARBANES. So you were picked by Governor White but Governor Clinton retained you, well, I guess, until he was gone from Arkansas, and then you decided to retire at some subsequent time?

Mr. GOODWIN. Well, I probably worked at least a year, maybe a year and a half under Governor Tucker.

Senator SARBANES. So you worked through three Governors as Director?

Mr. GOODWIN. Yes, sir.

Senator SARBANES. Of the Arkansas State Police?

Mr. GOODWIN. Yes, sir.

Mr. COLE. I just wanted to be clear on one final point, Colonel Goodwin. It goes back to a point Mr. Chertoff raised. There was a time when Governor Clinton asked you to inquire, at least raised concerns about Mr. Lasater and his cocaine or rumors of his cocaine use. Is that correct?

Mr. GOODWIN. I hope I made it clear that I'm not sure who initiated the conversation but yes, I did discuss it with him.

Mr. COLE. In any event, and I want to be clear too because I think this is important, there was a concern and the Governor shared the concern, whoever raised it, and you checked and found there was no record that Mr. Lasater was being investigated, and he certainly hadn't been tried or convicted at that time?

Mr. GOODWIN. That's correct.

Mr. COLE. So what you were dealing with at that time really was just rumors?

Mr. GOODWIN. That's what I was dealing with, yes.

Mr. COLE. I think earlier you drew a distinction and perhaps you didn't testify fully about it, but you noted that with the E.F. Hutton group and the concerns that some of the board members had raised about Hutton, Hutton had been convicted of Federal fraud charges. In fact, it entered a guilty plea at that time, so there was a conviction there.

Mr. GOODWIN. That's correct.

Mr. COLE. You drew a distinction, at least in your mind, between a situation where a firm had been found guilty in court on the one hand with Hutton, and on the other hand with Lasater, where you had some unsubstantiated rumors, and I recognize that later Mr. Lasater did plead guilty to drug charges and those rumors turned out to have some foundation, but at the time you were dealing with rumors?

Mr. GOODWIN. Yes.

Mr. COLE. Then I take it you would have had some question about whether it would have even been appropriate for the State to have taken what would have been pretty serious action against a group of underwriting firms, that would be to disqualify them from the bidding process, just based on some rumors that had not legal foundation at that time?

Mr. GOODWIN. If I had been a member of the Commission, I would have been concerned about it.

Mr. COLE. Thank you.

The CHAIRMAN. We have no further questions and this panel is dismissed with the thanks of the Committee. We have at least two intervening votes, and so we will reconvene at 3:00 o'clock.

[Whereupon, at 12:40 p.m., the Committee was recessed to reconvene at 3:00 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Before I swear in the witnesses, I am going to recognize Mr. Ben-Veniste for a statement.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

In response to inquiries that our office has received probably emanating from a story that appeared on the editorial page of The Wall Street Journal some time ago, I wanted to clarify something so I don't have to respond to a number of different inquiries.

The CHAIRMAN. Do you think that this will keep people from continuing to raise questions?

Mr. BEN-VENISTE. Probably not, but it will keep me from having to respond.

The CHAIRMAN. I was going to say, how naive.

Mr. BEN-VENISTE. In 1984 or 1985, I represented an individual by the name of Barry Seale in a criminal case brought against him in Federal Court in Ft. Lauderdale, Florida. Seale had asked me to represent him because of an earlier trial I had just won in the same courthouse.

Ultimately, Seale was convicted of illegally importing quaaludes into the United States, and thereafter became an undercover operator for the Government in several high-profile investigations because a link had been alleged in the right wing press involving Barry Seale, Mina Airport in Arkansas, and Dan Lasater.

I advised Senator Sarbanes, prior to my appointment as Special Counsel to this Committee, that if the Committee were to investigate these allegations, I would feel more comfortable if someone else on the staff were involved. Senator Sarbanes agreed that even though there was not a remote suggestion of a conflict of interest, that given the breadth of the anticipated inquiry by this Committee, the assignment of this area to another staffer would be agreeable.

Accordingly, I assigned the questioning of Mr. Lasater to others, even though this Committee has not concerned itself with the allegations concerning Mina Airport. I personally have seen no evidence from any source that would link Barry Seale to Mr. Lasater, much less to any area under inquiry by this Committee.

Clearly, there never has been nor is there now, to the best of my knowledge, any conflict between my prior representation of Mr. Seale and the work of this Committee. And I wanted you to know that, Mr. Chairman, and of course, Senator Sarbanes and I have discussed this early on and then again I thought it appropriate to make this statement.

The CHAIRMAN. Thank you.

Senator SARBANES. Mr. Chairman, I simply want to say I frankly do not think there was a conflict, but Mr. Ben-Veniste, in really an abundance of caution, thought it would work better this way, and that was the understanding we made at the outset, and I've seen nothing that's changed my view on that.

But I think, sir, that no questions are raised, we are going to follow this procedure although I want to make it very clear I think he could, in my own view, participate without there being a conflict of interest, but we'll avoid any questions about that by following this course of action.

The CHAIRMAN. I appreciate the sentiment shared by my Ranking Member, and I commend Mr. Ben-Veniste for taking this course of action.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. May I ask our witnesses to please stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. If any of the witnesses would like to make a statement, we would be happy to receive them at this time.

Mr. Bratton.

**SWORN TESTIMONY OF SAM I. BRATTON, JR.
FORMER COUNSEL TO GOVERNOR CLINTON**

Mr. BRATTON. No, Mr. Chairman.

The CHAIRMAN. Mr. Gaines.

**SWORN TESTIMONY OF MICHAEL J. GAINES
FORMER PUBLIC SAFETY LIAISON TO ARKANSAS STATE
POLICE FOR GOVERNOR CLINTON**

Mr. GAINES. No, sir.

The CHAIRMAN. Mr. Nash.

**SWORN TESTIMONY OF BOB J. NASH
FORMER SENIOR EXECUTIVE ASSISTANT FOR
ECONOMIC DEVELOPMENT TO GOVERNOR CLINTON**

Mr. NASH. No, sir.

The CHAIRMAN. I'll turn to Mr. Giuffra.

Mr. GIUFFRA. Good afternoon, panel.

Mr. Nash, if I could begin with you, sir. Between 1983 and 1988, you were the Senior Executive Assistant to Governor Clinton for Economic Development.

Mr. NASH. That is correct. I may have gone into 1989.

Mr. GIUFFRA. Then you became the head of the Arkansas Development Finance Authority?

Mr. NASH. That is correct.

Mr. GIUFFRA. While you were the Assistant to the Governor for Economic Development, did you know a man named Charles Stout?

Mr. NASH. I remember that name. I believe he was a board member of the Bond Authority.

Mr. GIUFFRA. Was he the Chairman of the Arkansas Development Housing Agency?

Mr. NASH. I can't remember whether he was the Chairman or not. I think I remember him being on the board.

Mr. GIUFFRA. And he was appointed by Governor White who was Governor Clinton's predecessor?

Mr. NASH. I don't remember who appointed him.

Mr. GIUFFRA. Did you ever speak to Mr. Stout about bond underwriting work for the Arkansas Development Housing Authority?

Mr. NASH. Did I ever speak to him when?

Mr. GIUFFRA. Some time during 1983, 1984, 1985, about the Arkansas Housing Development Housing Agency bond underwriting contracts?

Mr. NASH. I was on the Governor's staff at the time and I could have spoken to him if he was on the board at that time.

Mr. GIUFFRA. Did you ever instruct Mr. Stout to include a firm called Collins, Block & Lasater in HDA underwritings?

Mr. NASH. No, I did not.

Mr. GIUFFRA. You're certain that you did not do that?

Mr. NASH. I'm certain I did not do that.

Mr. GIUFFRA. Did you ever discuss with Mr. Stout on any occasion whether certain underwriting firms should receive a certain percentage of HDA underwriting work?

Mr. NASH. I don't recall ever discussing anything like that with Mr. Stout.

Mr. GIUFFRA. So you never said to Mr. Stout that, for example, the Block Lasater firm should receive 30 percent of the HDA work?

Mr. NASH. No, I don't recall ever mentioning anything like that.

Mr. GIUFFRA. Mr. Bratton, if I could turn to you. You were counsel to the Governor in the mid-1980's?

Mr. BRATTON. That's correct.

Mr. GIUFFRA. In that capacity, you were involved in drafting and reviewing legislation?

Mr. BRATTON. Among other things.

Mr. GIUFFRA. Let me direct your attention, do you recall legislation to authorize the financing of the police radio system?

Mr. BRATTON. Generally.

Mr. GIUFFRA. And that was part of the Governor's 1985 legislative package?

Mr. BRATTON. I don't recall whether it was a part of the Governor's package, as it was referred to. It was a piece of legislation that the Governor's office was interested in and supported.

Mr. GIUFFRA. Do you recall discussing this legislation with the Governor on any occasion?

Mr. BRATTON. I am sure I did discuss it with him on several occasions during that period of time. I don't have any specific recollection of any conversation.

Mr. GIUFFRA. Do you recall the Governor being present at meetings at which this bond underwriting contract was discussed?

Mr. BRATTON. The legislation or bond underwriting?

Mr. GIUFFRA. Let's talk about some legislation first.

Mr. BRATTON. That's been 11 years ago, and I don't recall specific meetings. Knowing generally how we operated, I am sure the Governor was present on more than one occasion when that piece of legislation and others would have been discussed in the context of the legislative session and the initiatives we were supporting.

Mr. GIUFFRA. You would agree that this was an important item on the Governor's agenda at the time?

Mr. BRATTON. Along with many other things that would have been important.

Mr. GIUFFRA. In terms of how you would have financed the police radio system, you considered a number of alternatives; right?

Mr. BRATTON. I do not recall how many alternatives were considered.

Mr. GIUFFRA. Was the actual legislation drafted in your office?

Mr. BRATTON. I don't believe so.

Mr. GIUFFRA. Were you aware that the Mitchell Williams law firm drafted the legislation?

Mr. BRATTON. Yes.

Mr. GIUFFRA. Was Mr. Jim Guy Tucker a partner in that firm?

Mr. BRATTON. I believe he was a partner in that firm at the time.

Mr. GIUFFRA. There was a Mitchell attorney who was present during the capital bid on the legislation?

Mr. BRATTON. There was a representative from the Mitchell firm that was present in some discussions about the legislation, I think.

Mr. GIUFFRA. Available to answer legislators' questions about the legislation?

Mr. BRATTON. On a few occasions that I recall, yes.

Mr. GIUFFRA. Do you know who decided that the Mitchell Tucker firm should draft this legislation?

Mr. BRATTON. No.

Mr. GIUFFRA. Was that a decision that was made by your office?

Mr. BRATTON. I believe that they provided a suggested draft to us. I don't have any recollection that we asked them to do that work.

Mr. GIUFFRA. In her testimony last week, Ms. Wright, who was Chief of Staff at the time, testified that, "All I know is that the work that the Mitchell firm did at our request in working with us on our legislation that was part of the Governor's package on the Governor's initiatives, and it had nothing to do with whatever else they were doing for Dan Lasater." Would her testimony be correct as far as you know? That you would have asked the Mitchell firm to do this work?

Mr. BRATTON. I don't recall whether we asked the Mitchell firm to do work or not.

Mr. GIUFFRA. The State of Arkansas did not pay the Mitchell Tucker firm to do this work. Is that right?

Mr. BRATTON. Not that I'm aware of.

Mr. GIUFFRA. Did you know who was paying the Mitchell Tucker firm's bills with regard to this legislation?

Mr. BRATTON. No.

Mr. GIUFFRA. And did you ever ask anyone who was paying the Mitchell Tucker law firm's bills in connection with drafting this legislation?

Mr. BRATTON. No, I did not. It was not uncommon, since neither the Governor's office staff nor the Bureau of Legislative Research staff, had any particular expertise in drafting bond type legislation, for attorneys with four or five of the bond law firms in Little Rock who did bond work to assist in drafting bond-related legislation. Sometimes those firms might have had an on-going relationship with a particular agency that would be involved with it, and would do that type of work.

Mr. GIUFFRA. And sometimes they might be representing one of the underwriters?

Mr. BRATTON. Or have been bond counsel or had worked with an underwriting firm. So it was not unusual where that type of legislation was being considered for us to have the legislation provided to us by a law firm that had bond expertise and expertise in drafting that type of legislation. So I didn't think anything in particular about it one way or another.

Mr. GIUFFRA. You didn't try to find out who was paying the bills?

Mr. BRATTON. No.

Mr. GIUFFRA. They, obviously, were not working pro bono or for free?

Mr. BRATTON. I don't know whether they were or not.

Mr. GIUFFRA. You didn't think they were, though, did you?

Mr. BRATTON. I didn't have any reason to think about it one way or another. As I said, it was fairly common for firms to assist in drafting legislation, either because of previous work they'd done for the State or perhaps in the expectation that they might get work in the future.

Mr. GIUFFRA. The Committee has received certain billing records indicating that the Mitchell Tucker firm billed Mr. Lasater's firm about \$22,000 to draft this legislation. Were you aware of that?

Mr. BRATTON. No.

Mr. GIUFFRA. You were not aware of the fact that the Mitchell Tucker firm was paid by Lasater?

Mr. BRATTON. No.

Mr. GIUFFRA. Mr. Gaines, you were not aware that the Mitchell Tucker firm was paid by Lasater, were you?

Mr. GAINES. No, I was not.

Mr. GIUFFRA. Mr. Nash, were you aware of that fact?

Mr. NASH. No, I was not.

Mr. GIUFFRA. Do you have any problem, Mr. Bratton, with one of the bidders being involved having their law firm draft legislation? Do you see any conflict potentially there?

Mr. BRATTON. I didn't at the time, and I don't think I do now.

Mr. GIUFFRA. Would you have wanted to know that the Lasater firm was paying the Mitchell Tucker firm to draft legislation?

Mr. BRATTON. I don't know whether that would have made any difference.

Mr. GIUFFRA. If you were going to be meeting with the Lasater firm's representatives, or the Mitchell firm's representatives, would you have wanted to know who was paying the bills?

Mr. BRATTON. As I said, at the time I didn't think one way or another about whether they were being paid or by whom they were being paid.

Mr. GIUFFRA. Now, Mr. Bratton, did you know who Dan Lasater was in 1985?

Mr. BRATTON. I generally knew who he was. I did not know him.

Mr. GIUFFRA. Did you know that he was a supporter of Governor Clinton?

Mr. BRATTON. I had that general impression, I think.

Mr. GIUFFRA. Mr. Gaines, did you know who Mr. Lasater was?

Mr. GAINES. No, I did not know him.

Mr. GIUFFRA. Mr. Nash, did you know who Lasater was in 1985?

Mr. NASH. Yes.

Mr. GIUFFRA. You believed him to be a supporter of Governor Clinton?

Mr. NASH. I understood that to be the case.

Mr. GIUFFRA. Were you aware that Mr. Lasater had held a fundraiser for Governor Clinton on October 4, 1984, at which approximately \$50,000 was raised?

Mr. NASH. I read that in the press since I've been in Washington.

Mr. GIUFFRA. Mr. Bratton, were you aware at the time that Mr. Lasater had held a fundraiser for Governor Clinton?

Mr. BRATTON. Not that I recall.

Mr. GIUFFRA. Were you aware that at the Governor's request, Mr. Lasater had employed the Governor's brother, Roger?

Mr. BRATTON. At some point, I knew Roger had worked for Dan Lasater. I don't think I ever knew how that came about.

Mr. GIUFFRA. Mr. Nash, were you aware of the fact that Mr. Lasater had employed the Governor's brother, Roger?

Mr. NASH. I understand that to be the case now.

Mr. GIUFFRA. Mr. Bratton, do you know a man by the name of Michael Drake?

Mr. BRATTON. I know who he is.

Mr. GIUFFRA. He was the Senior Vice President at the Lasater firm?

Mr. BRATTON. I don't know what his title was. I knew he was employed by the Lasater firm in the general timeframes that are under discussion today.

Mr. GIUFFRA. Did you attend any meetings with Mr. Drake in 1985, in connection with the police bond underwriting?

Mr. BRATTON. I had some discussion with Drake during that period of time while the legislation was under consideration.

Mr. GIUFFRA. Did you have any one-on-one meetings with Mr. Drake, just the two of you?

Mr. BRATTON. I'm sure he probably came by my office on an occasion and said, what's happening with the legislation, that sort of thing. I don't recall any protracted meetings with him.

Mr. GIUFFRA. You were aware that he was interested in having Lasater & Company being hired to handle financing for the radio system?

Mr. BRATTON. I assume that was his interest.

Mr. GIUFFRA. Mr. Gaines, did you ever meet with Mr. Drake back in 1985?

Mr. GAINES. I know that I met him I believe at a State Police Commission meeting during that timeframe. I do not recall having any one-on-one meetings with him.

Mr. GIUFFRA. Mr. Nash, do you recall meeting Mr. Drake back in 1985 in connection with this bond underwriting?

Mr. NASH. In connection with what bond underwriting?

Mr. GIUFFRA. The police radio system bond underwriting.

Mr. NASH. No, I don't recall meeting with him.

Mr. GIUFFRA. The Committee has obtained billing records from the Mitchell Tucker law firm that reflect that you attended, Mr. Nash, a conference on January 11, 1985, with Mr. Drake and a lawyer at the Mitchell Tucker law firm. Do you have any recollection of that meeting?

Mr. NASH. No, I don't.

Mr. GIUFFRA. Now the day before the Governor had met with persons from the Lasater firm and also from the Mitchell Tucker law firm, and discussed the police radio financing. Were you aware of that meeting?

Mr. NASH. No, I don't recall that meeting.

Mr. GIUFFRA. The billing records also indicate that on January 15th, 4 days later, a memorandum was sent to you by the Mitchell Tucker law firm and that was a response to a request you had made. Do you recall that at all?

Mr. NASH. No, I don't recall that.

Mr. GIUFFRA. The billing records also indicate that there were teleconferences between the Lasater law firm, Mitchell Tucker, and the Governor's office on January 19th and January 23rd. Do you recall that?

Mr. NASH. I'm sorry, ask the question again.

Mr. GIUFFRA. Do you recall telephone conferences between the Mitchell Tucker law firm and your office on the 19th and 23rd?

Mr. NASH. No, I don't.

Mr. GIUFFRA. If you could put up on the Elmo a March 4th meeting. These are notes of Mr. Bratton, DKS 17800. Mr. Bratton?

Mr. BRATTON. Is that in the packet as well?

Mr. GIUFFRA. It's on the Elmo.

Mr. BRATTON. I can't read it off there.

Mr. GIUFFRA. We will get it for you. It's DKS 17800. These are your notes, aren't they, sir?

Mr. BRATTON. They seem to be.

Mr. GIUFFRA. You attended a meeting on March 4th, again with Mr. Drake who worked for Mr. Lasater and Mr. Selig who worked for the Mitchell Tucker law firm, and Mr. Gaines. Is that correct?

Mr. BRATTON. That's what it seems to indicate. Also Paul Young, Mahlon Hardin, and Joe, who was probably Joe Stuart.

Mr. GIUFFRA. The Governor signed the legislation on April 4th, then the Police Commission made a final decision as to which financing proposal they would accept on May 10th.

Could we put up on the Elmo, DKS 27162. This is a memo from Mr. Gaines to Governor Clinton. Now, Mr. Gaines, you were the liaison between the Governor's office and the State Police; correct?

Mr. GAINES. Yes.

Mr. GIUFFRA. The Governor was a busy person; right?

Mr. GAINES. Yes, he was.

Mr. GIUFFRA. You would not normally bother the Governor and send him a memo of something containing unimportant information; right?

Mr. GAINES. I would convey to him any information coming from an agency head.

Mr. GIUFFRA. But it would have to be information that you considered important, would it not?

Mr. GAINES. No, it would not.

Mr. GIUFFRA. Any information you received from an agency head, you would immediately communicate to the Governor's office?

Mr. GAINES. Pretty much true. I would send a memo directed to the Governor and Betsey Wright.

Mr. GIUFFRA. This memorandum reports on certain observations of Mr. Goodwin. You knew Mr. Goodwin; correct?

Mr. GAINES. Yes, he was Director of the State Police at the time.

Mr. GIUFFRA. This reports on certain observations that he had with regard—

The CHAIRMAN. Let me ask you, why did you make this memo?

Mr. GAINES. I do not have any specific recall of preparing the memo, but clearly it's a type of memo I would have prepared and obviously, it is my handwriting. I'm only assuming, but I would assume that I had had communication with Colonel Goodwin and he had conveyed to me his observations concerning how he felt the

Commissioners were inclined toward the granting of that contract. And I was conveying that information on up to Ms. Wright and the Governor.

The CHAIRMAN. You see what is unusual is that it is not a question of whether the Commissioners were going to vote for or against a particular project. What this is is who the Commissioners are going to vote for as it relates to the undertaking of the work. What relevance would that have to the Governor, to any Governor, forget this Governor, to anyone if indeed he or his office was not interested in that? Do you follow what I'm saying? In other words, look, it's not a question how do they feel about the project. Do we agree? This memo is not with respect to whether or not these Commissioners are for the project. Is that correct?

Mr. GAINES. That's correct.

The CHAIRMAN. By the way, I take it that you did not speak to these individual Commissioners. You implied or said that you think you got this information from the then-Police Commissioner?

Mr. GAINES. The Director of the State Police. That's my impression that it was probably through a telephone call with Colonel Goodwin.

The CHAIRMAN. Weren't you at this meeting?

Mr. GAINES. I don't believe this was concerning a meeting. I believe the meeting was scheduled at some point in the future, and he was relating how he felt the Commissioners would vote, the members would vote.

The CHAIRMAN. So now here you are, you're talking to the Commissioner as it relates to what he thinks their vote is going to be as it relates to who the underwriter's going to be; right?

Mr. GAINES. Yes.

The CHAIRMAN. Why did you ask him that?

Mr. GAINES. I don't believe I did ask him that. Again, I don't have any specific recall, but it would have been in the normal course of our business for Colonel Goodwin to either call me or in the course of a conversation with him that I had initiated to say here's my impression of what's going to happen.

The CHAIRMAN. What's going to happen as it relates to the Commission making a decision that they are going to vote on the bonding person.

Let's put it in another area. Let's say it's not this radio thing. Let's say it's going to be another issue, the airport or some other State project. It wasn't your habit of having the Commissioner in charge of the Works Commission call you up and say, "I think this is the way the Commissioners are leaning in terms of voting for the bonding," was it?

Mr. GAINES. It was our general practice for the agencies that we served as liaison to to convey any information coming from the director to Ms. Wright and the Governor.

The CHAIRMAN. Wouldn't this be very unusual to have them conveying to you who they thought and how the votes were lining up even to the point where Rockefeller, we don't know?

Mr. GAINES. I can't address Colonel Goodwin's reasons for telling me that. All I know is that anything he conveyed to me I would have passed on.

The CHAIRMAN. Did somebody ask him to find out who the people are going to vote for?

Mr. GAINES. Not that I'm aware of.

The CHAIRMAN. But he did convey this information to you?

Mr. GAINES. Yes.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Now, Mr. Gaines, the Lasater group was part of a group with Hutton and also with T.J. Raney; right?

Mr. GAINES. Yes, that's correct.

Mr. GIUFFRA. In your memo, you don't make reference to Hutton or Raney, just to Lasater; right?

Mr. GAINES. Yes, that's correct.

Mr. GIUFFRA. Is that because the people in the Governor's office were only concerned about Lasater and not the other two?

Mr. GAINES. No, I'm assuming that it was because that was the way it was conveyed to me by Colonel Goodwin.

Mr. GIUFFRA. But Hutton was the lead underwriter; right?

Mr. GAINES. That I don't know.

Mr. GIUFFRA. Now in the memo, there's a notation from Betsey Wright which says, "Gov, we have real problem here since 'street talk' is that Lasater put in unreasonably low bid knowing he can raise it once he gets it." Up at the top, it says in the Governor's handwriting, "Lasater must be 'told' bid must be price." You got the memo back; right?

Mr. GAINES. I don't recall whether it came back. It was directed back to my suite of offices, but whether I actually saw it or it was filed, I do not know. I don't recall seeing it.

Mr. GIUFFRA. Did you hear any street talk yourself about Lasater low balling the bid?

Mr. GAINES. Not that I recall.

Mr. GIUFFRA. Did the Governor direct you to take any action, for example, contact the State Police and let them know that Lasater was low balling the bid?

Mr. GAINES. No. To the best of my knowledge, I never had a conversation with the Governor about it.

Mr. GIUFFRA. Because this memo says that Lasater should be told instead of the State Police right?

Mr. GAINES. I'm not sure I follow you.

Mr. GIUFFRA. The point is that the problem was that Lasater was low balling the bid; right? That's the concern Ms. Wright's expressing in the memo; right?

Mr. GAINES. As far as the street talk? Yes.

Mr. GIUFFRA. The Governor says, tell Lasater his bid has got to be priced. The Governor does not say tell the State Police that Lasater's low balling the bid. Do you see that in the memo, sir?

Mr. GAINES. Yes, I do.

Mr. GIUFFRA. You don't know why no direction was given to you to get to the State Police and say Lasater is low balling the bid?

Mr. GAINES. No, I do not.

Mr. GIUFFRA. Mr. Gaines, you attended a number of the State Police Commission meetings at which the various financing proposals were discussed; right?

Mr. GAINES. I remember attending one in particular where the formal presentations were made. It's very likely, if there were other

meetings during that period of time concerning the financing, that I would have been in attendance.

Mr. GIUFFRA. Do you recall reporting on those meetings to the Governor and Ms. Wright?

Mr. GAINES. I don't recall doing that, no.

Mr. GIUFFRA. Do you recall any reservations being expressed at those meetings about the Raney/Hutton/Lasater group because of certain legal difficulties E.F. Hutton had gotten into?

Mr. GAINES. No, I do not.

Mr. GIUFFRA. There came a time, I believe it was on May 10th, when the Police Commission approved the Lasater group to handle this financing; right?

Mr. GAINES. I mean, I know they were approved, but I do not know when that was.

Mr. GIUFFRA. Do you recall any discussions during this entire period in which there was any concern about the Lasater group or Mr. Lasater's reputation?

Mr. GAINES. No, I don't.

Mr. GIUFFRA. Do you recall any discussion at any time of Mr. Lasater's drug use in the Governor's office?

Mr. GAINES. No.

Mr. GIUFFRA. Mr. Nash, do you recall any discussion of Lasater's drug use while you were in the Governor's office?

Mr. NASH. No, I do not.

Mr. GIUFFRA. Mr. Bratton, do you recall any discussion of Mr. Lasater's drug use while you were in the Governor's office?

Mr. BRATTON. Not that I recall.

Mr. GIUFFRA. Did you ever discuss with Governor Clinton, Roger's relationship with Lasater?

Mr. BRATTON. No, I don't have any recollection of ever having done so.

Mr. GIUFFRA. Mr. Gaines, there was a request made by Governor Clinton to Colonel Goodwin to see whether Lasater was under investigation for drug use. Were you aware of that request?

Mr. GAINES. No, I was not.

Mr. GIUFFRA. And you never discussed the request with Colonel Goodwin?

Mr. GAINES. Not that I recall, no.

Mr. GIUFFRA. Now in early 1985, Mr. Bratton, do you recall Roger Clinton testifying at a trial in Federal Court involving a man named Anderson?

Mr. BRATTON. I have some vague recollection of news coverage of it at the time, from that time.

Mr. GIUFFRA. Mr. Gaines, do you recall Roger Clinton testifying at that trial involving a man named Anderson?

Mr. GAINES. It seems like I recall, similar with Mr. Bratton, I remember news accounts of that.

Mr. GIUFFRA. Mr. Nash, do you recall Roger Clinton testifying at Mr. Anderson's drug trial in Federal Court?

Mr. NASH. I seem to remember newspaper accounts or press accounts of that, yes.

Mr. GIUFFRA. If I could just direct your attention to certain press accounts, maybe you can put them on the Elmo.

Now, Mr. Nash, the Gazette was one of the two statewide papers at the time; is that right?

Mr. NASH. What year?

Mr. GIUFFRA. This is in 1985.

Mr. NASH. Yes, as I remember the Arkansas Democrat was one statewide paper, and the Arkansas Gazette was another.

The CHAIRMAN. Do you have a copy of that in front of you, Mr. Nash? Mr. Gaines, would you make that copy available?

Mr. GAINES. Sure.

The CHAIRMAN. Just to save time. Let's move it.

Mr. GIUFFRA. In this article, which is dated 2/27/85, which is several months before the Lasater firm receives the bond underwriting contract, there's a statement that a woman testifies that Mr. Dan Lasater—

The CHAIRMAN. Why don't you refer him specifically, what column is it that you're talking about?

Mr. GIUFFRA. It is in the second column over, midway down, it is the column which is now marked in yellow.

The CHAIRMAN. OK.

Mr. GIUFFRA. It's right on your screen.

The CHAIRMAN. Do you see where it says on the screen, and in this, Dan Lasater?

Mr. GIUFFRA. Do you see that, sir?

Mr. NASH. Yes, I see it.

Mr. GIUFFRA. I'll read it into the record. It says:

Ms. Canada also testified that Dan Lasater, an Arkansas native who owns a race horse farm in Florida and who once gave young Clinton [Roger], \$8,000 to help settle drug debts, also used cocaine.

Do you recall seeing that at the time?

Mr. NASH. No, I don't recall seeing that.

Mr. GIUFFRA. Mr. Gaines, were you aware of that testimony?

Mr. GAINES. No, I was not.

Mr. GIUFFRA. Mr. Bratton, were you aware of that testimony?

Mr. BRATTON. I don't recall.

Mr. GIUFFRA. Were you aware of the testimony, Mr. Bratton, with regard to the fact that Mr. Lasater had paid \$8,000 to Roger Clinton to help him pay off some drug debts?

Mr. BRATTON. I don't recall whether I read that article at the time or not.

Mr. GIUFFRA. Were you aware of that, Mr. Gaines?

Mr. GAINES. I don't recall being aware of it.

Mr. GIUFFRA. Mr. Nash?

Mr. NASH. I don't recall being aware of it.

The CHAIRMAN. Let me make an observation. I find that, if you don't recall it now, I understand. But let me tell you something. If something had been reported of this nature in just about anybody's State and particularly as it relates to you gentlemen and the positions that you held, I find it hard to understand why you would not have remembered, yes, there was something about that.

I understand that you can't recall everything. But I tell you this, I don't understand what would be so terrible, and it would be a lot more credible, at least as far as I'm concerned, if you were saying, I recall this. My gosh, you mean to tell me that people didn't comment on that? You mean to tell me that wasn't reported on the

radio and television thereafter? It's not credible for three people involved in the body politic as much as you were to sit here now and say that you never even heard that. That's nonsense.

Mr. BRATTON. Senator, if I might respond. I understood the question to be whether today I have a present recollection of having read this article a dozen years ago.

The CHAIRMAN. A dozen years ago?

Mr. BRATTON. I probably read this article. I don't recall.

The CHAIRMAN. There were news accounts about this article, weren't there, Mr. Bratton? Weren't there radio comments? Wasn't there TV comment? Wasn't there other things? Wasn't there talk in political circles? I mean, it would be unusual. Look, I do not think that when we get through, this panel is going to be the hill of beans that's uncovered—but I have to tell you what takes place and the kind of thing that I think is just exasperating, is that it would be absolutely, I believe, unbelievable to anyone who really understands you are deeply immersed in government in politics.

You care for the work you are doing, you care for your principal who you are working for, the Governor. Isn't that true, Mr. Gaines? Didn't you care for him?

Mr. GAINES. Certainly.

The CHAIRMAN. Of course you did.

Mr. Bratton, you were his counsel.

Mr. BRATTON. Absolutely.

The CHAIRMAN. Mr. Nash.

Mr. NASH. Absolutely.

The CHAIRMAN. My gosh, here the Governor's brother is accused of this and there's testimony to this. Of course, you'd be concerned. Certainly, you would have heard of it. If you didn't read that article yourself the first day, do you mean to tell me acquaintances wouldn't have mentioned it to you? Of course, they would have and they did; and for you to come here and say, "well, I don't recall," it's not credible. Now look, do I expect you to say I remember that very same day, but of course you heard this, and I don't mean you heard this last year or the year before. I mean, it had to be. This wasn't the first time, there were a number of occasions in which this situation took place.

So maybe the question was too narrowly drawn as it related to this specific trial and this specific time. But there came a point in time when there were newspaper articles as it related to this charge. As a matter of fact thereafter, I think it's indisputable that took place. That's just the observation I am going to make. The yellow light is on.

We are in the middle of a vote. We'll come back hopefully in 15 minutes. Try to be a little more up front, please. I mean, that's my observation to you. I think you all do your jobs as best you can. I'm not looking to browbeat, nobody's here looking to browbeat. We want to get your testimony. But I'll tell you, it's hard when I hear the kind of reply that came through. And I don't attribute any bad motives to any of you, but let's see if we can be a little bit more responsive and not so guarded.

By the same token, if Counsel asks you, can you recall a specific meeting at a specific time, I know darn well you may not and you probably can't, because I couldn't. It's unreasonable to expect recall

with specificity. But this kind of thing I think is a situation where we have to try to be a little more forthcoming, so we can move through this alot faster.

Senator SARBANES. Mr. Chairman, let me make this observation.

The CHAIRMAN. Sure.

Senator SARBANES. The question, as I understood it, was whether they recall now having read this article then. I think it's kind of hard to get upset with them when they say, well, you know, I don't recall now whether I read that article or not.

The CHAIRMAN. Well, you know what, I think that now we're getting down to the point where we're attempting through lawyers to find a way to evade and to be less than responsive and candid in the totality. You said the whole truth. I mean, the fact of the matter is that you were aware that this was raised back then. Do you recall with specificity the date that you read this? Of course no one would ask that. That's why I say it's disingenuous. All I'm asking and all Counsel's asking, and we will get through with this alot sooner, is be responsive.

Do you mean to tell me that you don't remember having read an article or heard about this thing, or you don't have recall that this thing didn't create a stir in the capitol in Little Rock?

What are we talking about? You didn't live in a State with 500 million people and this was some obscure place; you are in Little Rock. This newspaper is circulated there. You work for the Governor, your principal. His brother, it's been testified, was involved in a situation. You didn't talk about it? You didn't know about it? You didn't hear about it? Of course, you did. And for you to say, well, I don't recall, that's not saying if you don't recall reading this specific—did you hear about what was mentioned in this newspaper? Now do you have a recollection of having come to learn about this?

Mr. Gaines.

Mr. GAINES. I believe my testimony, Mr. Chairman, was that I have a general recall of the press accounts. The specifics of it I don't. This specific reference to a testimony by Ms. Canada.

The CHAIRMAN. You would never remember the name Ms. Canada, of course.

Mr. GAINES. And the fact that—

The CHAIRMAN. But the essence of it is that an \$8,000 drug debt was paid off by Lasater.

Mr. GAINES. No, I do not remember that part.

The CHAIRMAN. You don't?

Mr. GAINES. No, sir, I do not. I do remember the—

The CHAIRMAN. What do you remember?

Mr. GAINES. I remember some specific, I mean, just general press accounts of the fact that there was testimony in the trial of Mr. Anderson, I believe. I mean, that's all I remember.

The CHAIRMAN. Testimony, wait. You remember testimony at Mr. Anderson's trial about what Mr. Gaines; nothing specific? Nothing about the Governor's brother?

Mr. GAINES. I remember the accounts that were in the press. I remember that he testified there, but I do not remember the specifics of what he testified to, no, sir, I do not.

The CHAIRMAN. Really?

Mr. Nash, you too?

Mr. NASH. Mr. Chairman, when I was asked the question about whether I remembered about the Governor's brother and Mr. Lasater, I stated that I remember press accounts.

When this was put up on the screen, this highlighted portion, that mentioned the name and the dollars, I specifically do not remember that. There's a figure in there of \$8,000. Prior to seeing that on that screen, I would not know, I couldn't tell you what the figure was. I know there was some figure.

The CHAIRMAN. When that came out, when that account hit, people were talking about it, weren't they? Weren't they talking about it in the Capital?

Mr. NASH. I don't recall talking about it in the Capital.

The CHAIRMAN. You don't recall it, Mr. Gaines? Nobody talked about it?

Mr. GAINES. I don't have any recollection of it.

The CHAIRMAN. Mr. Bratton?

Mr. BRATTON. No, I don't remember. I don't recall.

The CHAIRMAN. If you say you don't recall, you don't recall. I just have to make an observation that I think it would be unusual. It is not credible to think that any Governor, forget this Governor, I mean, if something like that took place. I have to tell you the natural thing would be to say, "My gosh, what do you think about this? Oh, the guy's full of nonsense." I am not telling you and nobody seeks to incriminate anybody as it relates to what an account was, but it is not credible to think that somebody would not recall that kind of situation, given where you were, given where you were working, et cetera. I find it difficult to understand.

I think it would be a normal reaction for you to say, "It didn't happen." OK, that's your testimony. If you don't recall, you know this whole thing, if you're saying it didn't make a little stir within your own political circles and within your own working circles, that's fine, that's your testimony. I accept it for what it is.

We will break and then come back.

Senator Sarbanes.

Senator SARBANES. The Governor's brother had earlier pleaded guilty before this article ever appeared.

The CHAIRMAN. Well, that's why I find it rather incredulous that they wouldn't even take note of the fact that this situation with Lasater having paid off the drug debt, that it made nothing. They don't remember it. I mean, really. I think it would be the most natural thing in the world to remember. I cannot understand how the person that you worked for, that you wouldn't see any relevance, you wouldn't recall this, you wouldn't be either surprised or say it's nonsense or whatever. Of course, you would. You are the counsel to this man. You mean something like this, you wouldn't think about it?

Mr. BRATTON. Senator, what I have tried to say is that I do not have any recollection of conversations about these specific allegations that are contained in this article. It is entirely possible that people did comment on it. Do I remember today what those comments were and did they occur? I don't recall and I don't want to speculate about things that might have occurred or were likely to have occurred that I don't today recall.

The CHAIRMAN. I think we have really more than adequately covered it and I may have beaten the horse to death, and I think we ought to move on.

We are going to take a 15 minute break and come back, and at that time Senator Sarbanes will query.

[Recess.]

The CHAIRMAN. We'll resume, Counsel.

Mr. COLE. Thank you, Mr. Chairman.

Mr. Gaines, I would like to ask you just a couple of more questions about this memorandum that was shown to you previously. If we could put Mr. Gaines' 1985 memorandum up; thank you.

I think if I understood you correctly, Mr. Gaines, at this time you were the Governor's office liaison with the State Police. You were the Governor's office staff person with the principle responsibility for that agency?

Mr. GAINES. That's correct.

Mr. COLE. I think I also heard you indicate that at this time, that is, May 1985, you did not know who Mr. Lasater was. You did not know Mr. Lasater?

Mr. GAINES. I did not know him. I am confident that I had probably heard his name; but, no, I did not know him.

Mr. COLE. Don't worry, sir. I am not going to suggest otherwise. In fact, it struck me and I'm not critiquing your spelling here. If you look at this memorandum, you spelled his name L-a-s-i-t-e-r, and I think we now know that Mr. Lasater's name is spelled L-a-s-a-t-e-r. That would indicate to me that this is not someone that you are familiar with; in fact, you didn't even know how to spell his last name correctly.

Mr. GAINES. Clearly, I didn't.

Mr. COLE. I thought that was significant, because the suggestion is that somehow you were monitoring the progress of the Lasater group's bid on this bond offering. You were a little behind the curve as far as knowing who was who and what was what.

I guess it goes without saying you've already indicated that no one in the Governor's office told you to monitor or count the votes or count heads on this bond offering. You were just reporting what Colonel Goodwin had given you.

Mr. GAINES. That is correct. I was simply relaying what Colonel Goodwin apparently had told me.

Mr. COLE. And you prepared what appears to me to be a fairly informal handwritten memorandum, and just passed it on to Ms. Wright and the Governor in the normal course of business, as you would if you'd been given information by any department head?

Mr. GAINES. That's correct.

Mr. COLE. Mr. Bratton, I also have a couple of questions for you. We're going to try to be brief here. In terms of the role of the Mitchell Williams law firm in the drafting of this legislation that authorized the issuance of the bonds for this police radio network, you had as I understand it, a long career in State government, sir, and served as Counsel to the Governor for a number of years, as well as other posts?

Mr. BRATTON. That's correct.

Mr. COLE. In that capacity, did you have considerable dealings with legislation and the State Legislature?

Mr. BRATTON. Yes, I did.

Mr. COLE. Was it unusual for a group that had an interest in legislation or wanted to propose legislation to retain a law firm to write draft legislation and then give it to members of the Legislature or staff in the Executive Branch, hoping it would be proposed?

Mr. BRATTON. Not at all. It was common.

Mr. COLE. So what took place here wasn't out of the ordinary as far as the legislative process in Arkansas?

Mr. BRATTON. No, it was not.

Mr. COLE. And in fact, if a group had something that they wanted to bring before the Legislature and actually have enacted into law, they would need the assistance of a law firm in order to put it in the form of legislation that could then be enacted by the Legislature?

Mr. BRATTON. Most of the legislation in Arkansas at that time, and still today, is drafted by staff at the Bureau of Legislative Research. But when an entity or a business group or some other organization would have particular interest, particularly where some specific expertise would be required, it would be very common for them to have that legislation prepared by attorneys who had that expertise.

Mr. COLE. The final judgment, the final word as to what would be enacted into law and what would be included in the law was still up to the Legislature, I take it?

Mr. BRATTON. Absolutely.

Mr. COLE. Finally, Mr. Nash, I wanted to ask you, what was your position on the Governor's staff in 1985, the period we're talking about here, the spring of 1985?

Mr. NASH. I was Senior Executive Assistant for Economic Development.

Mr. COLE. Did you have responsibility as a liaison with the State Police at that time?

Mr. NASH. No, sir, I did not.

Mr. COLE. Did you have any responsibilities in connection with this bond offering for the State Police Radio Commission?

Mr. NASH. No, I did not.

Mr. COLE. We've reviewed the documents, and I'm just trying to see if you have any information that you can give that will help us on the issue that we're looking at today, the State Police radio bond offering. Did you have any involvement other than what you testified to earlier in that matter?

Mr. NASH. I don't recall that I did. My work was on bond issues relating to economic development, housing, single family, multi-family, industrial development, water, sewer, those kinds of things.

Mr. COLE. So with respect to the police radio network, that's not something you were involved in, you can't really help us on that?

Mr. NASH. That was not my responsibility.

Mr. COLE. Thank you.

Mr. Portnoy.

Mr. PORTNOY. Mr. Bratton, I just wanted to return for a moment to the subject of law firm participation in drafting bond legislation. I believe you testified that this was the norm?

Mr. BRATTON. Yes, sir. In terms of bond legislation, using that term generically, we had no expertise in the Governor's office, and

there was no expertise on the Bureau of Legislative Research staff with preparing that type of legislation. So it was very common for lawyers with firms that did bond work to prepare that type of legislation, whether it was for State agencies or some other group that might be interested in having the State undertake a particular project that the draft legislation would come from attorneys at one of four or five law firms.

Mr. PORTNOY. So there was nothing unusual in this case that the Mitchell firm might have participated in drafting legislation to authorize the police radio underwriting?

Mr. BRATTON. Nothing unusual about it at all.

Mr. PORTNOY. Why was legislation necessary in order to do the bond offering?

Mr. BRATTON. The Arkansas Constitution, which was adopted in 1874, has some fairly restrictive provisions about long-term financing options. And so in order to do a deal like the State Police radio system, and finance it over some longer period of time than a biennial appropriation, it was necessary to create a specific legislative mechanism to effectuate the intent.

Mr. PORTNOY. Thank you, sir.

Mr. Gaines, there have been press reports that Governor Clinton in some fashion pardoned Mr. Lasater after his incarceration on cocaine charges. Could you explain? I understand you were on the Arkansas Parole Board at the time; is that correct?

Mr. GAINES. Yes, I was a member of the Parole Board in 1986. I am not sure when that took place, but it was I believe after 1989 which was when I became a full-time member, when we had legislation concerning that. It was not at all uncommon when I was on the Governor's staff to have people with Federal convictions come to us asking for pardons.

Mr. PORTNOY. Could I stop you for a minute, sir? Mr. Lasater's conviction was a Federal conviction?

Mr. GAINES. It was a Federal conviction, yes.

Mr. PORTNOY. So Governor Clinton didn't actually have authority in any conventional sense to pardon him, Mr. Lasater, for his offense, did he, sir?

Mr. GAINES. No, he did not.

Mr. PORTNOY. Please continue, sir.

Mr. GAINES. As I was saying, we did have a number of people come to us requesting pardons for Federal offense convictions, even for some other States, and we would simply refer them back to the appropriate jurisdiction.

We soon became aware, after some discussions within the Department of Alcohol, Tobacco and Firearms, that a provision in Arkansas law provided that a person could not possess a firearm if they were a convicted felon, unless they had a pardon that specifically reinstated the right to possess firearms.

This aspect of our law caused a problem, particularly for the Federal system because they had provisions where a person could apply for a restoration of firearm rights as long as they were in compliance with the laws of the jurisdiction where they resided.

What we developed out of that was a procedure whereby a person with a Federal conviction could make application and receive a document from the State of Arkansas through the Governor's of-

fice which they could then take to the Federal authorities and apply for a firearm restoration which at that point then the Federal authorities could either grant or deny that.

Mr. PORTNOY. Would it be correct to say, sir, that insofar as you know, the only practical effect of this document the Parole Board prepared, and I presume the Governor signed, was to permit Mr. Lasater to go hunting?

Mr. GAINES. That's correct.

Mr. PORTNOY. It didn't in any way absolve him of wrongdoing?

Mr. GAINES. Not at all.

Mr. PORTNOY. I believe you indicated in your deposition that the only requirement to receive this kind of dispensation was that the applicant had discharged his Federal sentence; is that correct?

Mr. GAINES. That is correct. We dealt with the Federal cases alot differently than we would a person requesting an actual pardon from a criminal offense, a State conviction. Basically we were interested in assurance that the person had, in fact, discharged the sentence. It seems like we may have also looked to see if there were any fines, restitutions, or those types of things owed. But beyond that, we didn't go into the normal course of notifying officials and doing extensive backgrounds on whether a person was worthy of a pardon from their crime. These were handled routinely. If a person had discharged the terms of their Federal sentence, it was pretty much our position as a Parole Board to go ahead and give a favorable recommendation to those.

Mr. PORTNOY. So it would be fair to say, sir, that this was a routine matter?

Mr. GAINES. It was a routine matter.

Mr. PORTNOY. A relatively common matter?

Mr. GAINES. We did not do a whole lot of those. But they were not at all uncommon.

Mr. PORTNOY. Mr. Lasater didn't receive any special treatment?

Mr. GAINES. No, he did not.

Mr. PORTNOY. Or any special consideration?

Mr. GAINES. No.

Mr. PORTNOY. The Governor's office had no involvement in your deliberations as to whether to approve Mr. Lasater's application?

Mr. GAINES. No, they did not.

Mr. PORTNOY. That was entirely the Parole Board's own decision?

Mr. GAINES. Yes. It would have come to us first, and we would have voted and then referred the file and recommendation to the Governor's office.

Mr. PORTNOY. Thank you, sir.

We're prepared to cede back our time, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Giuffra.

Mr. GIUFFRA. Mr. Nash, in 1990, were you involved in Governor Clinton's Gubernatorial Re-election Campaign?

Mr. NASH. Yes, sir, I was.

Mr. GIUFFRA. What did you do for the Governor's Re-election Campaign?

Mr. NASH. I primarily spoke to economic development and community groups around the State to explain the Governor's record

primarily in economic development, and to encourage them to support the Governor for re-election.

Mr. GIUFFRA. You were very careful when you said primarily were involved in giving speeches around the State for the Governor. Did you do anything else in connection with the 1990 Gubernatorial Campaign?

The CHAIRMAN. Don't answer that question. Let me ask you this. What other activities did you undertake? You see, I don't want you to say anything else. What other activities did you undertake?

Mr. NASH. I remember seriously licking envelopes many times when that was needed. I would meet with groups and explain the record. I did a wide range of activities, but primarily speaking to groups. That's what I did.

Mr. GIUFFRA. And were you involved at all in get-out-the-vote activities?

Mr. NASH. No, other than speaking to groups and encouraging them to get-out-to-vote. But not what you would typically call get-out-the-vote activities, no.

Mr. GIUFFRA. If we could put up on the Elmo page 321 of Betsey Wright's January 26, 1996 deposition.

The CHAIRMAN. Can we have somebody help Mr. Nash with that? Thank you, Mr. Gaines.

Mr. GIUFFRA. If I could just direct your attention to the passage that I believe in your copy is marked in yellow on 321.

Mr. NASH. OK. I have the deposition of Betsey Wright. I see where it says page 321, but it's not marked or anything.

The CHAIRMAN. Look at page 321. You see the answer there, "Well, then there is a third conversation."

Mr. Giuffra.

Mr. GIUFFRA. She says:

Well, then there is a third conversation. I was having a conversation at some point, and I don't remember where or why or how or what the subject was, but the issue of the 1990 campaign came up. I was talking to Bob Nash, and he told me that once Bruce had asked him to go to Perry County and pick up some get-out-the-vote cash for him.

Did there ever come a time during the 1990 campaign when Mr. Lindsey asked you to go to the Perry County Bank, and pick up some get-out-the-vote cash?

Mr. NASH. No.

Senator SARBANES. Are you also going to complete that by setting out Ms. Betsey Wright's testimony in the hearing? When she said, "This was a mistake."

Mr. GIUFFRA. Yes.

Senator SARBANES. She said in her sworn testimony, "This was a mistake."

Mr. NASH. The answer is no.

Mr. GIUFFRA. Did there ever come a time during the 1990 campaign when Mr. Lindsey asked you to go to the Perry County Bank?

Mr. NASH. No, not that I recall. Let me say I was asked to go take some loan papers to Perry County Bank and pick up a check. That occurred. And I think I testified to that in my deposition.

Mr. GIUFFRA. Let's put up on the Elmo pages 55 and 56 of Ms. Wright's—

The CHAIRMAN. Just for my edification, did you do that then, go over there and pick up a check?

Mr. NASH. Yes, sir.

The CHAIRMAN. And you testified to this previously?

Mr. NASH. In my deposition, I sure did.

Mr. GIUFFRA. At the hearing last week, Ms. Wright corrected, wanted to change her testimony. Let's focus on the question:

Mr. CHERTOFF. What part of that sworn testimony do you want to correct?

Ms. WRIGHT. The sentence that begins "I was talking" should probably be corrected to read, "I was talking to Bob Nash and he told me that once Bruce had asked him to go to Perry County Bank for him."

Mr. CHERTOFF. For him. So the part where you told us in your sworn deposition, "and pick up some get-out-the-vote cash," that's inoperative now?

Ms. WRIGHT. Yes, sir, it is.

Now, Ms. Wright told us last week that after she had her deposition on January 26th, she contacted you. Do you recall Ms. Wright contacting you?

Mr. NASH. Yes, I do.

Mr. GIUFFRA. What did Ms. Wright say to you during this conversation?

Mr. NASH. She called and asked, "Did I remember saying to her that I had picked up some cash in Perry County Bank?" And I told her, "No, I did not, specifically did not remember that."

Mr. GIUFFRA. Did she indicate to you why she believed that you had picked up some cash at the Perry County Bank?

Mr. NASH. No.

Mr. GIUFFRA. Did she mention Mr. Lindsey?

Mr. NASH. No, she did not mention Mr. Lindsey.

Mr. GIUFFRA. Did you contact Mr. Lindsey after you spoke to Ms. Wright and ask him why Ms. Wright might have had the impression that you had gone to the Perry County Bank to pick up some cash?

Mr. NASH. No, I did not.

Mr. GIUFFRA. Have you ever spoken to Mr. Lindsey about this trip that you made to the Perry County Bank?

Mr. NASH. No, I have not.

Mr. GIUFFRA. Let's change the subject.

Mr. BRATTON, when you were counsel to the Governor, did you normally speak to Ms. Bassett Schaffer, I guess then Beverly Bassett, who was the Securities Commissioner?

Mr. BRATTON. Yes, I did.

Mr. GIUFFRA. Would you speak to her about investigations that the Securities Department was conducting?

Mr. BRATTON. It was a fairly common practice for her to advise me of enforcement actions that the Department was preparing to take. She normally would not talk to me about investigations when they were considering whether to initiate an investigation, or the progress of an investigation. But it was a fairly common practice for her to notify me before the Department took significant regulatory actions.

Mr. GIUFFRA. Would you normally advise the Governor and Ms. Wright of the information that was provided to you by Ms. Bassett?

Mr. BRATTON. On most occasions, I would. Some occasions I probably didn't.

Mr. GIUFFRA. And did there ever come a time when Ms. Bassett advised you that Mr. Lasater was having problems with the NASD, the National Association of Securities Dealers, and also with the Arkansas Securities Department?

Mr. BRATTON. I have a general recollection that she did so.

Mr. GIUFFRA. I believe in your deposition you could not recollect whether it was before or after 1986?

Mr. BRATTON. I don't recall what the timeframe was.

Mr. GIUFFRA. So you don't know whether it was before or after the police bond offering?

Mr. BRATTON. I am relatively sure it was after the police radio deal, but I am not positive of that.

Mr. GIUFFRA. Did you contact the Governor and Ms. Wright with this information?

Mr. BRATTON. I don't recall whether I did or not.

Mr. GIUFFRA. Mr. Bratton, if we could put up on the Elmo, this is a December 14, 1983 letter from Mr. Lasater to Governor Clinton. The Bates numbers are DKSJ 27455 to 27456.

Mr. BRATTON. Yes.

Mr. GIUFFRA. Do you have that in front of you, sir?

Mr. BRATTON. I do.

Mr. GIUFFRA. Who is Linda Garner?

Mr. BRATTON. Linda Garner at that time was the State Insurance Commissioner.

Mr. GIUFFRA. Now in this letter, Mr. Lasater is discussing the disbursement of certain securities that were owned by National Investors Life Insurance Company, and Lasater expresses his concern on the fourth paragraph of the first page of the letter that First Boston and Stevens are going to be appointed to handle certain future transactions involving this portfolio of securities. Do you remember this issue?

Mr. BRATTON. Only in a very general way.

Mr. GIUFFRA. The National Investors Life Insurance had had difficulty, and they were now liquidating the assets.

Mr. BRATTON. That's correct.

Mr. GIUFFRA. At the top of the memo, that is a notation. That is the Governor's handwriting; am I right?

Mr. BRATTON. It is the Governor's handwriting.

Mr. GIUFFRA. It says, "Keep after Garner til you talk to her. You must give him follow-up." Presumably "him" is Lasater. Do you see that there?

Mr. BRATTON. I do.

Mr. GIUFFRA. Did you ever see this letter back in 1983?

Mr. BRATTON. I don't believe so.

Mr. GIUFFRA. Mr. Nash, did you ever see this letter?

Mr. NASH. No, I don't believe I did.

Mr. GIUFFRA. Do you know, Mr. Nash, whether there was ever any follow-up with regard to Mr. Lasater's request to Governor Clinton with regard to Linda Garner?

Mr. NASH. Not that I know of.

Mr. GIUFFRA. Mr. Bratton, are you aware of any follow-up?

Mr. BRATTON. Not that I'm aware of.

Mr. GIUFFRA. Did there come a time—I believe it was in January 1985—when Governor Clinton replaced Insurance Commissioner Garner? Do you recall that, Mr. Bratton?

Mr. BRATTON. Yes, I do.

Mr. GIUFFRA. Did you have any role in her termination?

Mr. BRATTON. I was assigned by the Governor the day that he told her he was not going to reappoint her as Insurance Commissioner. I was assigned to go to her office and be there while she moved her personal belongings out of the office.

Mr. GIUFFRA. You actually were at the office while she removed her personal belongings?

Mr. BRATTON. That's correct.

Mr. GIUFFRA. Mr. Bratton, I would like to ask you some questions about something called the Twin City Bank. There was some branching legislation in Arkansas back in the late 1980's. Do you recall that legislation?

Mr. BRATTON. Generally.

Mr. GIUFFRA. Were you aware in the period, say around 1987, that the Clintons had an investment in the Whitewater Development Corporation?

Mr. BRATTON. I'm not sure when I first became aware of their participation in that project.

Mr. GIUFFRA. Do you think it was before or after the 1992 Presidential Campaign?

Mr. BRATTON. It was before the 1992 Presidential Campaign.

Mr. GIUFFRA. Were you aware that the Clintons had a loan that related to the Whitewater Development Corporation with the First Ozark Bank?

Mr. BRATTON. I don't believe I was.

Mr. GIUFFRA. Were you aware that the First Ozark Bank was owned by the Twin City Bank?

Mr. BRATTON. I'm not sure whether I was or not.

Mr. GIUFFRA. Did you ever discuss proposed inter-county branching legislation with anyone at Twin City Bank?

Mr. BRATTON. I may have; I don't recall.

Mr. GIUFFRA. Do you recall this legislation at all?

Mr. BRATTON. Yes, in a general way.

Mr. GIUFFRA. If you could just describe for the Committee what the purpose of the legislation was.

Mr. BRATTON. As I recall, it would have allowed under certain restrictions banks to branch outside the community in which their principle office was located, and in some very limited circumstances, I think branch into adjoining counties.

Mr. GIUFFRA. Twin City Bank was located outside of Little Rock; is that right?

Mr. BRATTON. Twin City Bank was located in North Little Rock.

Mr. GIUFFRA. But not in Little Rock. They wanted to be able to have branches in Little Rock. Do you recall that?

Mr. BRATTON. I recall they had some interest in that.

Mr. GIUFFRA. Because Little Rock was obviously a bigger market than North Little Rock.

Mr. BRATTON. It was a larger market than North Little Rock.

Mr. GIUFFRA. Do you know whether the Governor was aware of Twin City's interest in obtaining this legislation that would have allowed branching into Little Rock by Twin City?

Mr. BRATTON. I don't have a specific recollection of what he knew or didn't know. I think it was fairly common knowledge what the background of the legislation was and what the concerns were. It was an issue that was kind of—split the banking community. The Governor had supporters on both sides of the issue, so I'm sure he was generally aware of what the issue was.

Mr. GIUFFRA. Was he aware that the legislation would benefit Twin City? Do you think he would have been aware of that?

Mr. BRATTON. I don't recall any conversation I had with him that would have indicated what he understood to be the effects.

Mr. GIUFFRA. Under the Arkansas Constitution, there's a provision that bars what's described as special legislation that benefits just one party; is that right?

Mr. BRATTON. That's generally correct.

Mr. GIUFFRA. Do you recall any discussion with regard to this branching legislation, that it might be unconstitutional under the Arkansas Constitution?

Mr. BRATTON. I don't recall any discussion to that effect.

Mr. GIUFFRA. Do you recall whether there was an Attorney General's opinion sought with regard to whether this legislation was constitutional under the Arkansas Constitution?

Mr. BRATTON. I don't recall.

Mr. GIUFFRA. Mr. Bratton was the Governor's office involved in the selection of Mr. Lasater as an investment banker for the police radio contract?

Mr. BRATTON. Not that I'm aware of.

Mr. GIUFFRA. Mr. Gaines, what's your testimony?

Mr. GAINES. I'm not aware that they were.

Mr. GIUFFRA. Mr. Nash, what's your testimony?

Mr. NASH. Same question?

Mr. GIUFFRA. Yes.

Mr. NASH. I'm not aware they were.

Mr. GIUFFRA. Mr. Bratton did Mr. Lasater, as far as you know, receive any kind of special treatment with regard to obtaining the bond underwriting work for the police radio contract?

Mr. BRATTON. Not that I'm aware of.

Mr. GIUFFRA. Mr. Gaines.

Mr. GAINES. I'm not aware of any special treatment he received.

Mr. GIUFFRA. Mr. Nash, do you have any belief that he had any special treatment?

Mr. NASH. Not that I'm aware of.

Mr. GIUFFRA. Isn't it true, Mr. Bratton, that Mr. Lasater's law firm drafted the legislation?

Mr. BRATTON. It is apparently accurate that the Mitchell firm drafted—there's no question the Mitchell law firm drafted the legislation.

Mr. GIUFFRA. And the Mitchell firm was paid by Lasater; right?

Mr. BRATTON. I think there are some documents that indicate that. I was not aware of that.

Mr. GIUFFRA. The bills showed that they charged the Lasater firm \$22,000 to draft this legislation; isn't that right?

Mr. BRATTON. The document speaks for itself.

Mr. GIUFFRA. Were you aware of an issue—

The CHAIRMAN. Mr. Giuffra, how much more time do you have—let me ask Senator Sarbanes—we will try to finish it at this point. Go ahead.

Mr. GIUFFRA. After the Lasater firm was selected to do this work, First Capital, which was the other firm involved in the bidding process, issued a complaint; do you recall that, Mr. Bratton?

Mr. BRATTON. I don't recall it. I'm aware from a question or two that was asked in my deposition that that did occur. I don't remember the details of it.

Mr. GIUFFRA. Mr. Gaines, do you recall that issue coming up?

Mr. GAINES. Could you repeat the question?

Mr. GIUFFRA. First Capital, which was the losing bidder, complaining about the fact that Lasater had gotten the bid?

Mr. GAINES. From my deposition, I do recall there was a memorandum that apparently I drafted conveying a dissatisfaction on the part of, I think it was Capital. I don't have it in front of me.

The CHAIRMAN. It was Capital.

Mr. GIUFFRA. Let's put up that memo on the Elmo. It's DKS 18184. Do you recall drafting this memo to Ms. Wright?

The CHAIRMAN. Let him take a look at it. Take a look at it, Mr. Gaines, and see to what extent if any it refresh your recollection. Does this refresh your recollection about the event, that there was apparently a protest of some sort, an objection raised, and then you wrote this memo in response to that?

Mr. GAINES. It truly does not. I do not recall writing this memo, but I have no reason to think that it's not one that I drafted.

The CHAIRMAN. OK.

Mr. GIUFFRA. The fourth paragraph of the memo states, "Capital points out that the legislation"—you have in parentheses "(written by H,L,R)." Who is H,L,R, as far as you know? Is that Hutton, Lasater & Raney?

Mr. GAINES. At this point, I would say that that's who that is referring to.

Mr. GIUFFRA. So you knew on May 15, 1985, that the legislation had been written by the Raney/Hutton/Lasater group; is that right?

Mr. GAINES. No, that is not correct.

Mr. GIUFFRA. That is what the memo seems to suggest, sir, doesn't it?

Mr. GAINES. The memo suggests that I have written a memo to Betsey Wright conveying concerns expressed by Capital Resources Group over certain issues. I can only assume that I am conveying what I was told by whoever it was that I spoke to—and I don't identify anyone here as having contacted me, but apparently someone with the Capital Resources Group must have contacted me, and I was conveying that information to Ms. Wright. I'm assuming that was part of what they told me, was that the legislation was written by H,L,R.

Mr. GIUFFRA. So it is your testimony that you did not know on May 15, 1985, that the Raney/Hutton/Lasater group had written the legislation?

Mr. GAINES. That's correct.

Mr. GIUFFRA. Were you surprised by that?

Mr. GAINES. I don't think—I mean, I don't know whether I was surprised. I don't suppose I was.

Mr. GIUFFRA. Did you know that the Mitchell Tucker firm had drafted the legislation?

Mr. GAINES. I don't know if I knew that at that point or not. I know when I did the deposition I looked at a number of documents, and it was obvious from those documents that the Mitchell firm was involved in the drafting. Whether I knew that at that point, I'm really not sure.

Mr. GIUFFRA. Didn't you attend a meeting, the one on March 4, 1985, put up before Mr. Bratton's notes? And that indicated that you were meeting Mr. Drake, Mr. Selig, who was with the Mitchell Tucker firm, just yourself and Mr. Bratton? That would be the lawyer for Lasater, Lasater's Senior Executive Vice President. You didn't know from that meeting that Mr. Selig from the Mitchell Tucker firm was representing Mr. Lasater?

Mr. GAINES. I don't remember attending this meeting. In my deposition, I saw this and tried to figure out who Mike G. could be other than me. I couldn't come up with anyone else it could have been, but I do not have any recall of attending a meeting with these individuals.

Mr. GIUFFRA. In your May 15th memo, the issue arises as to whether the key issue is whether the investors were to be paid on a monthly or on a bi-yearly basis. Do you recall that issue?

Mr. GAINES. I do not recall it. I see it reflected in the memo.

Mr. GIUFFRA. The critical distinction between the Lasater proposal and the proposal by First Capital was that First Capital provided that investors would be paid on a monthly basis, whereas Lasater was having the payments only twice a year, and therefore would get the arbitrage on the money. Do you recall that issue coming up?

Mr. GAINES. I'm sorry.

Mr. GIUFFRA. They would get the benefit of the use of the money. Do you recall that issue coming up?

Mr. GAINES. I do not recall the issue coming up, but I can only go by what's reflected on the memo.

Mr. GIUFFRA. Mr. Bratton, do you recall that issue at all?

Mr. BRATTON. I don't recall that specific issue.

The CHAIRMAN. Do you have that memo in front of you, Mr. Bratton?

Mr. BRATTON. Yes, sir, I do.

Mr. GIUFFRA. Let's put up one last document.

The CHAIRMAN. Wait. It says, "I have discussed this with Sam." Mr. Gaines, who would you take Sam to be?

Mr. GAINES. I'd take that to be Mr. Bratton. If you will notice in the first paragraph, it mentions that the matter will be discussed by Legislative Council on Friday. Mr. Bratton was and has, my understanding, attended most if not all of the Legislative Council meetings, and anything that was coming up concerning legislation before the Legislative Council, I'm sure I would have let him know, either by phone or by memo.

The CHAIRMAN. Mr. Bratton, do you recall having discussed this issue?

Mr. BRATTON. I don't recall having discussed this issue with Mr. Gaines. It's entirely likely that I did so. I do recall that one or more firms or groups who did not get the business raised various issues about the decision. I don't remember the specific one.

The CHAIRMAN. This was quite specific. You might not recall it at this time. But when you look at the memo and the testimony that we had today from the various people, apparently it was a concern as it related to whether the payments could be structured over a 6-month period of time, as was indicated in the winning bid, which would then make it lower, or whether they had to be made monthly. You have no recollection of that being an issue?

Mr. BRATTON. I don't have any current recollection of that being an issue.

The CHAIRMAN. Are you aware of the fact that the same firm that had prepared the legislation had been retained by the group? It was not just Lasater, it was the group of three consortium that was the winning bid.

Mr. BRATTON. It was my impression at the time that the Mitchell firm, if they were being compensated, were probably being compensated by the Raney firm. I never had the impression that they were being compensated by the Lasater firm.

The CHAIRMAN. The Lasater firm, the Raney firm, and the Hutton firm were all together, weren't they?

Mr. BRATTON. They were part of a package.

The CHAIRMAN. A consortium.

Mr. BRATTON. That's correct.

The CHAIRMAN. So whether the retainer was with one specifically, and they all chipped in, I mean, their legislative representation was on behalf of this consortium, including Lasater; wasn't that correct?

Mr. BRATTON. Based on the documents today, that appears to be the situation.

The CHAIRMAN. Now here you have this winning consortium; right? They win. They're initially the low bid, or they're the bidder. They're awarded the bid. Did there come a time when indeed they were selected?

Mr. BRATTON. Correct.

The CHAIRMAN. If you want me to do it this way, I will. Did there come a point in time when someone put in a protest?

Mr. BRATTON. As I indicated earlier, I was aware that one or more groups that didn't get the bid had some complaints about it.

The CHAIRMAN. Did there come a point in time when this was brought to your attention as counsel?

Mr. BRATTON. It probably was, I don't specifically recall.

The CHAIRMAN. As counsel, what would you have done to deal with this? Did you then ask for a review to be made?

Mr. BRATTON. I don't recall what I did, Senator.

The CHAIRMAN. Would it surprise you to know that the Mitchell firm was then called upon to render a legal opinion in connection with the objection that was raised with respect to whether it was appropriate to make an award based upon a 6-month return, as opposed to the customary one, which was one? Were you aware that they had been called upon to make this review? And do you recall ever getting their legal review?

Mr. BRATTON. I don't recall, Senator.

The CHAIRMAN. Does it surprise you now when you look back that the same firm who represented the winning consortium was the firm that was called upon to judge the merits of the complaint that came from one or more of the unsuccessful bidders?

Mr. BRATTON. I don't know whether that happened or not.

The CHAIRMAN. Let me show you a copy of the letter of review. Could we make that available to Mr. Bratton? You want to identify that, please. Do you see it up on the Elmo? I think you have it in your packet. Who is Mr. Erxleben?

Mr. BRATTON. Mr. Ed Erxleben was Director of State Purchasing in the Department of Finance and Administration.

The CHAIRMAN. But you have asked him to review the complaint?

Mr. BRATTON. I have no recollection of having asked him to review the complaint. I believe based on having seen part of Ms. Wright's testimony that she had indicated that she had asked Mr. Erxleben to assist the State Police Commission in establishing procedures to evaluate the proposals and make a determination. So it's possible that she may have asked Mr. Erxleben to make this inquiry, or Mr. Erxleben may have done it on his own. But I don't have any.

The CHAIRMAN. Let's take a look. First we have the memo written by Mr. Gaines, May 15, 1985, Subject: ASP Communications System. You have that next to you, the one you just looked at?

Mr. BRATTON. Yes, sir.

The CHAIRMAN. Take a look. They raise a question with respect to the proposal and they point out with specificity, "Act 817 attached, see highlights on page 5," in which they question whether the 6 months payment was appropriate as opposed to the one. That's the question raised; isn't that correct, Mr. Bratton?

Mr. BRATTON. That's what the memo says, Senator.

The CHAIRMAN. Then on the 16th of May, we have the Mitchell Williams law firm writing to the Director of Purchasing. Would you read that first paragraph? Start with "Dear Mr."—who is that?

Mr. BRATTON. Dear Mr. Erxleben.

The CHAIRMAN. Mr. Erxleben is the Director of Purchasing. What does it say?

Mr. BRATTON. It says, "You have asked our opinion on a question of interpretation"—

The CHAIRMAN. Stop right there. "You have asked our opinion." So obviously the Director of Purchasing, as a result of this communique that came to the Governor's office on May 15th, whether by you, Ms. Wright, or somebody then calls these lawyers and says, "Hey, look. This has been a question." Is that correct.

Mr. BRATTON. Senator, I don't know why Mr. Erxleben made that request.

The CHAIRMAN. I don't expect you to remember with specificity at this time. We have a May 15th communique which indicates that one of the unsuccessful bidders has protested; right?

Mr. BRATTON. That's correct.

The CHAIRMAN. On May 16th, we have the Director of the Arkansas Office of State Purchasing, getting a letter written to him from a law firm with respect to the legality of this bid, questions raised; is that right?

Mr. BRATTON. That's correct.

The CHAIRMAN. Obviously, he has communicated to them. Obviously, someone after this was sent to Betsey Wright in the Governors office, communicated this to the Purchasing Director. Is that correct, someone from the Governor's Office?

Mr. BRATTON. No, sir. That is not necessarily correct. What I would assume, as the more likely scenario, is that same objection was raised with the State Police Commission, and that Mr. Erxleben, who had been advising the State Police, raised the question with the Mitchell firm as a result of his role working with the State Police.

The CHAIRMAN. We're getting there. So now the Director of Purchasing raises this question; right? He says, "Go ahead. You have asked our opinion on this to interpret Section 5 of Act number 814 of 1985," right?

Mr. BRATTON. Yes.

The CHAIRMAN. That comes down to whether it's proper to do it in 6 months or a month; right? Isn't that the gist of the memo?

Mr. BRATTON. The question presented is whether Section 5 of the Act requires that lease payments as defined in Section 3 are required to be made on a monthly basis to investors who purchase an interest in a lease agreement authorized by the Act.

The CHAIRMAN. So it is the question raised here in the memo, which Mr. Gaines called to the attention of Betsey Wright; isn't that correct?

Mr. BRATTON. It seems to be the same question.

The CHAIRMAN. Don't you see a problem with respect to the very same firm that represented the successful bidder, then indicating and giving a legal opinion as to whether that indeed was a proper procedure to follow as it related to whether 6 months or a month was permitted, as opposed to having the Attorney General or some other outside counsel being called in for that review?

Mr. BRATTON. Senator, I have no idea why Mr. Erxleben made this request or what he did with the information.

The CHAIRMAN. Mr. Bratton, I believe you. I don't suggest that you did. You see, the problem here is that attorneys drew up the legislation who represented the successful term. Then when a protest came up, they were the same ones who said that the protest had no merit. Don't you see a problem there?

Mr. BRATTON. No, sir. What I think is entirely possible is that Mr. Erxleben asked the firm that drafted it what their understanding of the intent was. I don't know that Mr. Erxleben made a decision based on what he was told in this letter; rather that it was part of a process that he was going through in trying to make an evaluation.

The CHAIRMAN. What about the propriety of a firm that represents a party in interest, thereafter making a legal opinion upon which you then proceed to sustain this written to the Purchasing Director? You don't see any problem with that?

Mr. BRATTON. I don't see any problem with Mr. Erxleben asking the folks who drafted the legislation what their intent was. If that was the only thing he looked at and made a decision solely on the basis of what's contained in this letter, then I might agree with you, but I have no reason to believe that.

The CHAIRMAN. Well, if you had known that this firm as counsel was also retained by the group, would you have sought or advised that they be the attorneys who would issue an opinion as it related to the awarding of this bid?

Mr. BRATTON. Senator, I don't know that they have "issued an opinion." Mr. Erxleben apparently asked them a question. I don't know that it was intended to be in lieu of an opinion from some official source, or that he understood it to be anything in the nature of an impartial inquiry, that he understood that they had a vested interest. But he asked them what their understanding of the intent was.

The CHAIRMAN. Senator Sarbanes, I want to thank you for having been more than generous in permitting us to follow this line of questioning.

Senator SARBANES. Mr. Bratton, isn't it reasonable to assume on the basis of the record before us that Capital had presented to Mr. Erxleben in the State their view of what the statute meant?

Mr. BRATTON. That would be my impression, that that was probably what happened, Senator.

Senator SARBANES. They were a party at interest. They didn't get chosen, but they then came to the State—and I see this reflected in the Gaines memo of May 15th—and laid out their view on the monthly payments question.

Mr. BRATTON. That's correct.

Senator SARBANES. And, Mr. Gaines, isn't that reflected in your memo?

Mr. GAINES. Yes, it is.

Senator SARBANES. "Capital points out that the legislation requires monthly payments. See highlights on page 5." I don't know whether Capital also submitted an opinion letter, but they certainly submitted an opinion orally, if not in writing; is that correct?

Mr. GAINES. That is correct. I assume it was oral, but I am not sure.

Senator SARBANES. This was a letter to Erxleben from the Mitchell law firm from Anne Ritchey, a partner at the Mitchell law firm, laying out their interpretation of the statute. Do you have any problem with Erxleben getting this information from the parties that were involved in the process, both the successful and the unsuccessful party?

Mr. BRATTON. It would seem to be an appropriate thing to have done.

Senator SARBANES. This letter didn't make the judgment. Mr. Erxleben in the end, or the Commission itself, if he was advising the Commission, made the judgment.

Mr. BRATTON. The State Police Commission would have made the initial judgment, and would have had the authority to review any complaints that had been raised and take whatever action they thought was appropriate.

Mr. COLE. I have one final question about these two documents, Mr. Bratton. I'm referring to Mr. Gaines' memorandum of May 15th, which I think you have there, and then the May 16th letter from the Mitchell Williams firm. Is there anything that would make you believe that this law firm turned around this fairly com-

plicated opinion letter overnight, as opposed to having previously been asked for it by Erxleben or someone on his staff?

Mr. BRATTON. Certainly much more prompt work than I normally found to be the case in dealing with lawyers.

Mr. COLE. I was going to say I have drafted a few of these in my day, and one of them overnight would be an impressive feat—not impossible, I suppose, but certainly impressive.

Senator SARBANES. Is it correct that the way it's operated in Arkansas that bond counsel would often draft bond legislation since it's fairly technical?

Mr. BRATTON. That was the rule almost without exception.

Senator SARBANES. There is no capacity within the State bureaucracy to draft the bond legislation? It's usually done by the outside counsel; is that correct?

Mr. BRATTON. Yes, sir, that's correct.

Senator SARBANES. And that would be the case regardless? I mean, it would vary, I guess, according to who was seeking the bids, and so forth and so on; is that correct?

Mr. BRATTON. Yes.

Senator SARBANES. OK.

Mr. COLE. Just to follow up on that, Mr. Bratton, the State Police have never offered bonds before this particular offer that we are talking about today; is that correct?

Mr. BRATTON. There had been some type of financing done to build a State Police headquarters; but that may well have been done by State building services, rather than by the State Police. I simply don't recall. But that would have been the only other instance, and it was probably done by building services, with State Police paying rent as tenant.

Mr. COLE. My point just being that this was a unique situation, so you may have had to turn to someone with special expertise, an outside law firm?

Mr. BRATTON. It was common in doing that type of financing to have the legislation drafted by lawyers who routinely did bond work.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. When you drafted this, you picked the lawyers for one of the bidders; right? There were a number of people who were interested in this project in early 1985; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. You picked one of them to have a lawyer who would be the drafter of the legislation; right?

Mr. BRATTON. We didn't pick anyone.

Mr. CHERTOFF. Did they pick themselves?

Mr. BRATTON. The Mitchell firm on their own initiative, as far as I know, drafted the legislation and submitted it for our consideration.

Mr. CHERTOFF. But other firms drafted legislation and submitted it, and you worked with the Mitchell firm in putting it together; is that right?

Mr. BRATTON. The Mitchell firm submitted the draft of the proposed legislation; that is correct. I have no recollection that any other law firm or any other investment group submitted a competing draft, if you will.

Mr. CHERTOFF. Didn't the Friday firm also submit legislation on behalf of Stevens?

Mr. BRATTON. I don't recall that they did so. Stevens was interested. But the legislation that was introduced, and passed, passed without a negative vote in either House of the General Assembly.

Mr. CHERTOFF. That's not my question. You're moving away from my question. You're a lawyer. You understand questions and answers. Listen to me. Are you telling us that the only firm to submit a proposal was the Mitchell Tucker firm on behalf of Raney?

Mr. BRATTON. I don't recall that the Friday firm submitted a competing proposal.

Mr. CHERTOFF. You're telling us at the time you started working with the Mitchell Tucker firm on putting together the legislation, you knew they were working for Raney and Lasater's bid group?

Mr. BRATTON. I had a general impression that they had prepared the legislation at the request of Raney.

Mr. CHERTOFF. So you knew when you were putting together the legislation and inviting the lawyers for the Lasater group into the inner sanctum, so to speak, to work with the Governor's office in putting together the package? You understood that the lawyers you were using were the lawyers for one of the groups among a whole number of groups that would have been competing?

Mr. BRATTON. They basically prepared a piece of legislation.

Mr. CHERTOFF. Mr. Bratton, don't make it seem like you were just a passive actor here sitting like a potted plant in the office while people came in and did things.

Mr. BRATTON. I am trying to answer your question. I did not sit down and negotiate and draft a piece of legislation with lawyers from the Mitchell firm. They did the work. They proposed it and submitted it to us. We went forward with it as the vehicle.

Mr. CHERTOFF. You put the Governor's seal of approval and stamp on that bill; right?

Mr. BRATTON. Yes, sir.

Mr. CHERTOFF. You put that bill in knowing it was prepared by the lawyers for one of a number of competing groups?

Mr. BRATTON. I think everybody who was involved in the process understood that, including other people who were interested in competing for the ultimate business.

Mr. CHERTOFF. That's not what Ms. Wright said on Thursday. Ms. Wright said on Thursday she thought this had nothing to do with the Lasater firm.

Mr. BRATTON. I didn't follow.

Mr. CHERTOFF. Ms. Wright's testimony last Thursday was that, as far as she was concerned, the Mitchell firm was doing this work for the Governor's office, and she had no idea that this was in any way connected with anything that they were doing for Mr. Dan Lasater.

I'll read you the quote, page 205 of the hearing. Betsey Wright:

All I know is that the work that the Mitchell firm did at our request in working with us was on our legislation that was part of the Governor's package on the Governor's initiatives. And it had nothing to do with whatever else they were doing for Dan Lasater.

Now, you are telling us that you knew all along that they were working with you on the legislation on behalf of Dan Lasater?

Mr. BRATTON. It was my impression that they had prepared the legislation for Raney.

Mr. GIUFFRA. Let's put up DKS 17843. Mr. Bratton, to follow up, do you have that letter in front of you?

Mr. BRATTON. What?

The CHAIRMAN. You had it in your packet.

Mr. GIUFFRA. The letter of March 8th. You attended the meeting on March 4th; right?

Mr. BRATTON. Yes, sir.

Mr. GIUFFRA. At that meeting there were representatives of the Lasater firm; right? Mr. Drake was there; correct? He was there?

Mr. BRATTON. That's what the notes indicate.

Mr. GIUFFRA. Four days later we have a letter from Mr. Lasater's lawyer, Mr. Selig, to you, which says:

Dear Sam:

Enclosed is an original and three copies of an amendment which will substitute the language of the bill we discussed over the phone today for the language of the existing bill.

This letter indicates that you spoke with Lasater's lawyer, Mr. Selig, about the actual language and discussed possible changes with regard to the legislation, doesn't it?

Mr. BRATTON. That indicates I talked to Mr. Selig.

Mr. GIUFFRA. Doesn't it also indicate that you discussed changes in the legislation with Mr. Selig? You were negotiating working with Lasater's lawyer as to what the final terms of the legislation would be?

Mr. BRATTON. No, sir. The bill that was introduced on May 1st was a shell bill that appropriated \$1 to buy a radio system. A totally new bill, in the form of an amendment, was adopted and amended onto that bill. It was a draft that was prepared by the Mitchell firm.

Mr. GIUFFRA. The bill was introduced on March 1st; right?

Mr. BRATTON. Yes, sir.

Mr. GIUFFRA. You had the meeting with Mr. Lasater's representatives on March 4th; right?

Mr. BRATTON. That's what the notes indicate.

Mr. GIUFFRA. Then Lasater's law firm sent you a new version of the real bill on March 8th; right? That's what this letter indicates, doesn't it?

Mr. BRATTON. It indicates that the Mitchell firm sent me a draft of a piece of legislation; that's correct.

Mr. GIUFFRA. That's the legislation that was introduced by the Governor; right?

Mr. BRATTON. That was the legislation that was introduced and passed; yes.

Mr. GIUFFRA. Let's go into one more area of inquiry and then we'll be done. The legislation gets enacted on April 4th; right?

Mr. BRATTON. I believe that's the date it was signed.

Mr. GIUFFRA. The State Police award the contract to Lasater on May 10th; right?

Mr. BRATTON. That's apparently correct.

Mr. GIUFFRA. Now after the State Police awarded the contract to Lasater, wasn't there a provision in the legislation that would allow a review by the Legislature?

Mr. BRATTON. I believe there is a provision that provided it be reviewed by the Telecommunications Study Committee, and probably by Legislative Council.

Mr. GIUFFRA. What is the Legislative Council of the Arkansas Legislature?

Mr. BRATTON. The Legislative Council is a body—at that point it probably had 28 or 30 members—that functioned while the General Assembly was not in session. We have biennial sessions that last 3 or 4 months. And the Council was an interim body of the General Assembly.

Mr. GIUFFRA. So under this legislation, if the Legislative Council did not approve Lasater, Lasater would not get the contract; right?

Mr. BRATTON. The Legislative Council's authority was review and advice.

Mr. GIUFFRA. But you needed to get their approval in order for Lasater to get the contract; right?

Mr. BRATTON. It would have been possible to go forward without favorable Council action.

Mr. GIUFFRA. But didn't you try to get the approval of the Legislative Council?

Mr. BRATTON. Yes.

Mr. GIUFFRA. Isn't it correct that you initially did not get the approval of the Legislative Council for the Lasater bid?

Mr. BRATTON. I don't recall. There was a question in my deposition last week that indicated that initially there were more favorable votes than negative votes, but it was short of the majority required for favorable action by Legislative Council.

Mr. GIUFFRA. Let's put up on the Elmo DKSX 18182. This is a memo from Betsey Wright to Governor Clinton re: Knox Nelson, State Police Communications. Who is Knox Nelson?

Mr. BRATTON. He was a Senior Senator and Chairman of the Telecommunications Committee.

Mr. GIUFFRA. So he was an important Senator in terms of getting the approval of the Legislative Council; right?

Mr. BRATTON. Yes.

Mr. GIUFFRA. The chairmen of committees are normally fairly powerful people; right?

Mr. BRATTON. Yes.

Mr. GIUFFRA. Both in Congress and in the Arkansas Legislature. According to this memo from Betsey Wright, who was M-a-h-l-o-n? Did he work for the Governor? Was he a lobbyist?

Mr. BRATTON. Mahlon Martin was Director of the Department of Finance and Administration.

Mr. GIUFFRA. He's advising Ms. Wright "that Senator Knox intends to call a special meeting of his Telecommunications Study Committee," and he is aiming for not letting the contract with the investment firm that's been approved by the State Police. Rather, what he'd like to do is have this funded through the State Pension Fund; isn't that right?

Mr. BRATTON. That's what the memo says.

Mr. GIUFFRA. Do you recall this issue coming up on May 13th?

Mr. BRATTON. I have some general recollection that Senator Nelson had problems with the proposal.

Mr. GIUFFRA. Did you discuss those problems with anyone from the Lasater firm?

Mr. BRATTON. I don't recall that I did.

Mr. GIUFFRA. This memo indicates that Ms. Wright contacted Mr. Drake, who worked at the Lasater firm; right?

Mr. BRATTON. That's what the memo says.

Mr. GIUFFRA. The memo does not indicate that she's talking to anyone else about the problem they're having with Senator Nelson; is that right?

Mr. BRATTON. No.

Mr. GIUFFRA. Am I correct that you then undertook to lobby the Legislature in order to get the approval of the Lasater firm; isn't that right?

Mr. BRATTON. I'm sure we did.

Mr. GIUFFRA. And Governor Clinton lobbied to get the approval of Lasater through the Legislature; isn't that correct?

Mr. BRATTON. I don't recall. But I am sure we would have made efforts to try and get favorable action.

Senator SARBANES. On what?

Mr. BRATTON. On getting the contract that the State Police had awarded approved.

Senator SARBANES. And was the contract Raney, Hutton, and Lasater?

Mr. BRATTON. That's correct.

Senator SARBANES. So it was that consortium?

Mr. BRATTON. That's correct.

Mr. GIUFFRA. To sum up, when there was a problem, there was a problem that arose with Senator Nelson; right?

Mr. BRATTON. That's what the memo indicates.

Mr. GIUFFRA. The memo indicates that Ms. Wright alerted Mr. Lasater's agent with regard to the problem; right?

Mr. BRATTON. That's what the memo indicates.

Mr. GIUFFRA. Then the action that was taken was that the Governor's office lobbied the Legislature to make sure that Lasater's bid would get the necessary approval; right?

Mr. BRATTON. No, sir. We lobbied the Legislative Council to get Council's favorable action on a decision that had been made by the Arkansas State Police Commission so we could go forward with the acquisition of a radio system. We would have done the same thing if the Capital Group or Stevens, Inc., or anyone else had gotten the bid based on the decision of the State Police Commission.

Once they had made that decision, then we would have taken the same action in trying to secure Legislative Council's favorable action. It had nothing to do with the fact that the Lasater firm was one of three in that consortium.

Mr. GIUFFRA. How do you know that?

Mr. BRATTON. Because I know how we did business.

Mr. GIUFFRA. Wasn't it also true, sir, that you were alerting the Lasater firm when the problem was arising?

Mr. BRATTON. The memo indicates that Betsey Wright had made Mike Drake aware that Senator Nelson had some concern about the proposal.

Mr. GIUFFRA. No further questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I don't think we have any questions.

The CHAIRMAN. I want to thank the panelists for participating. We stand in recess until tomorrow at 10:00 a.m.
[Whereupon, at 6:35 p.m., the hearing was recessed until 10:00 a.m. on Wednesday, May 1, 1996.]

[Appendix supplied for the record follows:]

Didn't have large cocaine dealings with Roger Clinton, lawyer testifies

By Philip I. Lantieri
JAZZIE STAFF

NOT SPRING8 — Sam Anderson Jr., a Not Springs lawyer charged with distributing cocaine and conspiracy to distribute cocaine, took the stand in his own defense Wednesday and denied allegations he had purchased thousands of dollars' worth of cocaine from Roger Clinton.

Both sides have now rested and the case will go to the jury today. Federal Judge Orin Harris kept court in session Wednesday until after 6 p.m. to allow the defense to complete its presentation.

The government has charged that between November 1983 and June 1984, Anderson paid \$32,000 for cocaine to Roger Clinton, who is the younger brother of Governor Bill Clinton, and Maurice Rodriguez, a Colombian national living in New York City. Clinton has testified he was the go-between for a majority of the purchases. Clinton and Rodriguez have pleaded guilty to drug charges and have been sentenced to federal prison terms.

Says witnesses lying

Anderson admitted that he used cocaine and gave it to friends, but said he did not sell the drug as several witnesses have claimed.

When United States Attorney W. Aas Hutchinson asked Anderson about some specific allegations by witnesses, Anderson said they were lying.

He said his cocaine purchases from Clinton were far below the figures used by the government and that the drug was intended only for his personal use. Anderson was asked by Hutchinson if he had other sources for cocaine and he said he had made small purchases from Curtis (Chuck) Berry, who said in testimony Tuesday that he was a chauffeur for Dan Laaster, a Little Rock business man. Hutchinson asked Anderson

if he had other sources and he said "none of this came to mind."

Anderson said he began using cocaine in 1981 or 1982 and he said it was Roger Clinton who had first offered him the drug. He said he and Clinton were long-time friends and often met in night clubs in Not Springs and that the offer of cocaine "would usually happen late in the evening after we had been drinking for some time."

Anderson said his consumption of the drug increased and he noticed it was having an effect on his health. "I was trying to go non-stop, around the clock, and it began to catch up with me," he testified.

Anderson said he had met Rodriguez through Roger Clinton and another friend, Lana Crews. He said he was told Rodriguez was a chef and that his name was Maurice West. Anderson said he had never purchased cocaine from Rodriguez and had not been aware Rodriguez sold the drug.

Meeting arranged

In the summer of 1984, Anderson said Roger Clinton contacted him and told him that he had to see him. They arranged to meet in a boat on Lake Hamilton because Clinton said he didn't want to be seen in a public place with Anderson, then a prosecutor.

Anderson said Clinton told him that he had been approached by State Police investigators and that he was "very, very frightened." He said Clinton informed him that the investigators wanted to "set up three peepers." Clinton's drug supplier, Anderson and Laaster, Anderson said that during the Lake Hamilton meeting he had seen "an unmarked car coming along the shoreline."

After that conversation, Anderson said Clinton called him on the phone "and talked extensively about cocaine. It was obvious to me that he had been instructed to

do so," that he wanted to implicate me over the telephone."

Anderson said that Gina Canada, 23, of Not Springs, whom he dated for a time in 1983 "had not been truthful with this jury" in her testimony. Canada testified Tuesday that she had used cocaine that Anderson had provided and had seen him sell the drug on two occasions. He said that Canada accompanied him on a trip to Europe in 1983 and that their relationship had been "strained" before their departure "and in Europe, it got worse." He said that he terminated their relationship because Canada "had a bad habit of consuming large quantities of alcohol, was abrasive and violent."

Tries to show whereabouts

Using his desk calendars, credit card slips and telephone bills, Anderson attempted to establish his whereabouts on the approximate dates in which the government alleges that various drug transactions were made. He admitted the information would not account for his actions "every hour of the day and night." Defense attorney Floyd Clardy of Bryant said it had been difficult to compile the information "because every time we find the government where Anderson was they changed the notes" of the alleged offenses for which Anderson is charged.

The government did drop one count of the indictment that alleged Anderson distributed cocaine on June 27, 1984, after he showed that he had been in Fort Worth on that date.

Anderson was asked about a Christmas party he is alleged to have held at his home in Not Springs December 18, 1983, during which Roger Clinton allegedly delivered cocaine he had picked up from Rodriguez in New York City. Anderson said he didn't recall the event. "I might have had a party that night, but I just can't recall," he testified.

DKSN017635

Lasater & Company

INVESTMENT BANKERS

August 21, 1985

Mr. Paul Young
Vice President
T. J. Raney & Sons
Investment Bankers
3600 Cantrell Road
Post Office Box 3647
Little Rock, Arkansas 72203

Re: Arkansas State Police Communications
Financing Expenses

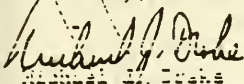
Dear Paul:

Lasater & Company submits the following expenses for reimbursement on the referenced transaction:

Travel, entertainment and miscellaneous:	\$ 750.00
Legal, organizational and miscellaneous:	<u>\$26,500.00</u>
Total:	\$27,250.00

Thank you in advance for your enthusiastic support of our efforts.

Sincerely,



Michael J. Burke
Senior Vice President

MJD/jp



TAX OFFICES

MITCHELL, WILLIAMS, SKELIN, JACKSON & TUCKER

1000 South Federal Building
Capitol Annex at Sprague Street
Little Rock, Arkansas 72201
Telephone 501-330-9101

March 15, 1985

Mr. Michael Drake
Senior Vice President
Lasater and Company
312 Louisiana Street
Little Rock, AR 72201

CLIENT NO 6039-

(PLEASE DETACH THIS PORTION AND RETURN WITH YOUR PAYMENT)

Re: Legal Services Performed
through February 28, 1985

FILE NO. 6039-4 - 1985 LEGISLATION ADVICE

FEES:	\$ 3,979.00
EXPENSES:	<u>342.51</u>
TOTAL AMOUNT:	\$ 4,321.51

FILE NO. 6039-5 - LEASING PROPOSAL

FEES:	\$ 4,081.00
EXPENSES:	<u>912.09</u>
TOTAL AMOUNT:	\$ 4,993.09

TOTAL AMOUNT DUE: \$ 9,314.60

PREVIOUS BALANCE: 22,836.33TOTAL AMOUNT DUE: \$32,150.93

(ITEMIZATION ATTACHED)

TAX OFFICES

MITCHELL, WILLIAMS, SKELIN, JACKSON & TUCKER

1000 South Federal Building
Capitol Annex at Sprague Street
Little Rock, Arkansas 72201Telephone
501-330-9101DUPLICATE IDENTIFICATION
NO. 11-200445

MITCHELL, WILLIAMS, SELIG, JACKSON & TORGER

STATEMENT OF SERVICES RENDERED AS OF 2/28/85

CLIENT 6039 - LASATER & COMPANY

MATTER 4 - 1985 LEGISLATION - ADVICE

DATE	SERVICE PERFORMED
2/15/85	INTRAOFFICE CONFERENCE ANNE RITCHEY AND JOHN SELIG TELEPHONE CONFERENCE WITH MICHAEL DRAKE TELEPHONE CONFERENCE WITH WOOTEN EPES CONFERENCE WITH JOHN SELIG AND ANNE RITCHEY
2/18/85	CONFERENCE WITH WOOTEN EPES
2/19/85	INTRAOFFICE CONFERENCE ANNE RITCHEY AND BILL WOODYARD
2/20/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
2/21/85	CONFERENCE WITH DAN MOUDY CONFERENCE WITH JOE NASH CONFERENCE WITH ELDON DANIELS
2/22/85	ATTEND INSURANCE AND COMMERCE COMMITTEE MEETING
2/24/85	REVIEW STEPHENS INTL'S ADFA BILL AND DRAFT MEMORANDUM
2/25/85	TELEPHONE CONFERENCE WITH FIRST PYRAMID INTRAOFFICE CONFERENCE BILL WOODYARD AND ANNE RITCHEY
2/26/85	DELIVER DOCUMENT TO DAN MOUDY AND MICHAEL DRAKE TELEPHONE CONFERENCES WITH LAUREL ESTERLEIN RE PROPOSAL
2/27/85	TELEPHONE CONFERENCE WITH DAN MOUDY

MITCHELL, WILLIAMS, SELIG, JACKSON & FUCHS

STATEMENT OF SERVICES RENDERED AS OF 2/28/85

CLIENT 6039 - LASATER & COMPANY

MATTER 5 - LEASING PROPOSAL

DATE	SERVICE PERFORMED
2/25/85	<p>INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG AND W. C. BARRIER</p> <p>TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN</p> <p>REVIEW AND REVISION OF LEGISLATION</p> <p>PREPARE BILL FOR DELIVERY TO E. F. HUTTON IN NEW YORK</p>
2/26/85	<p>CONFERENCE WITH PAUL YOUNG & MICHAEL DRAKE</p> <p>CONFERENCE WITH MESSRS. DRAKE AND YOUNG</p>
2/27/85	<p>INTRAOFFICE CONFERENCE ANNE RITCHEY AND JOHN SELIG</p> <p>CONFERENCE WITH MESSRS. DRAKE AND YOUNG</p> <p>CONFERENCE WITH COL. GOODWIN</p> <p>CONFERENCE WITH MICHAEL DRAKE, PAUL YOUNG, BOB SNYDER AND JOHN SELIG</p>

LAW OFFICES

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

THIRD FLOOR FEDERAL BUILDING
CAPITOL AVENUE AT SPRING STREET
LITTLE ROCK, ARKANSAS 72201
Telephone 501-378-1181

February 20, 1985

Mr. Michael Drake
Senior Vice President
Lawater & Co.
312 Louisiana Street
Little Rock, AR 72201

CLIENT NO. 6039-

PLEASE DETACH THIS PORTION AND RETURN WITH YOUR PAYMENT TO INSURE PROPER CREDIT

Re: Legal Service.. Performed
through January 31, 1985

FILE NO. 6039-4 - 1981 LEGISLATION ADVICE

FEES:	\$17,647.00
EXPENSES:	<u>676.13</u>
TOTAL AMOUNT:	\$18,323.13

FILE NO. 6039-5 - LEASING PROPOSAL

FEES:	\$ 4,154.00
EXPENSES:	<u>359.20</u>
TOTAL AMOUNT:	\$ 4,513.20

TOTAL AMOUNT DUE:	<u>\$22,836.33</u>
-------------------	--------------------

(Itemization attached)

MITCHELL, WILLIAMS, SELIG, JACKSON & FORTIN

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
1/04/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
1/07/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH E. F. HUTTON PEOPLE
	INTRAOFFICE CONFERENCE JOHN SELIG AND ANNE RITCHEY
	TELEPHONE CONFERENCE WITH E. F. HUTTON
	INTRAOFFICE CONFERENCE WITH BILL WOODYARD, ANNE RITCHEY AND JOHN SELIG
1/08/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	REVIEW E. F. HUTTON DOCUMENTS
	CONFERENCE WITH ANNE RITCHEY
	CONFERENCE REGARDING POLITICAL CONCERNS
	LEGAL RESEARCH REGARDING ISSUES PRESENTED BY HUTTON PROPOSALS
	INTRAOFFICE CONFERENCE ANNE RITCHEY AND JOHN SELIG
	LEGAL RESEARCH REGARDING BOND AUTHORITIES
1/10/85	LEGAL RESEARCH REGARDING BOND ISSUE QUESTIONS
	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG, BILL WOODYARD RE PROPOSED LEGISLATION
	ATTEND MEETING ON ECONOMIC DEVELOPMENT LEGISLATIVE PROPOSALS
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	CONFERENCE WITH ANNE RITCHEY AND JOHN SELIG
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE RE LEGISLATION
	CONFERENCE WITH MICHAEL DRAKE AND E. F. HUTTON

MITCHELL, WILLIAMS, SELIG, JACKSON & THOMAS

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 1 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH MR. MEINZ
	CONFERENCE WITH MR. DRAKE
	WORK ON PROPOSAL
	CONFERENCE WITH HUTTON PEOPLE
1/10/85	CONFERENCE WITH E. F. HUTTON & LASATER PEOPLE TO PREPARE FOR PRESENTATION TO THE GOVERNOR
	ATTEND PRESENTATION TO THE GOVERNOR
	CONFERENCE WITH LASATER/HUTTON WORKING GROUP AND GOVERNOR'S STAFF
	CONFERENCE WITH LASATER & HUTTON PEOPLE
1/11/85	CONFERENCE WITH MESSRS. DRAKE AND NASH
	INTRAOFFICE CONFERENCE JOHN SELIG, ANNE RITCHEY AND BILL WOODYARD
	DOCUMENT PREPARATION AND REVIEW
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN RE DRAFT OF LEGISLATION
	INTRAOFFICE CONFERENCE BILL WOODYARD, JOHN SELIG, AND ANNE RITCHEY RE PROPOSAL TO GOVERNOR
1/12/85	REVIEW PROPOSED LEGISLATION
1/13/85	REVIEW LEGISLATION
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH PATSY THOMASSON
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
1/14/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE

MITCHELL, WILLIAMS, SELIG, JACKSON & THORNTON

STATEMENT OF SERVICES RENDERED . S OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
	CONFERENCE WITH JOHN SELIG, PAT MORAN AND ANNE RITCHEY
	WORK ON LEGISLATION
	TELEPHONE CONFERENCE WITH MR. BEALE
	REVIEW PROPOSED LEGISLATION
	TELEPHONE CONFERENCE WITH LAUPEL ESTERLEIN
	REVISE PROPOSED LEGISLATION
	REVISE GUARANTY BILL
	DELIVER MEMORANDUM
1/15/85	DRAFT MEMORANDUM TO MR. NASH AND WORK ON RESPONSE TO HIM
	CONTINUE REVISION OF PROPOSED GUARANTY BILL
	INTRAOFFICE CONFERENCE BILL WOODYARD AND PAT MORAN RE LEGISLATIVE MATTERS
	CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE JOHN SELIG ANNE RITCHEY, H M MITCHELL AND BILL WOODYARD
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	PREPARE AND TRANSMIT LEGISLATION
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
1/16/85	TELEPHONE CONFERENCE WITH MR. JAMES
	INTRAOFFICE CONFERENCE BILL WOODYARD, JOHN SELIG, AND ANNE RITCHEY
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE

MITCHELL, WILLIAMS, SELIG, JACKSON & TURNER

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN
	ATTEND MEETING ON LEGISLATIVE MATTERS
	DELIVER PACKAGE FOR MR. WOODYARD
1/17/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE BILL WOODYARD AND ANNE RITCHEY
	CONFERENCE RE LEGISLATION
	CONFERENCE WITH MICHAEL DRAKE
	CONFERENCE WITH JERRY JACKSON, JOHN SELIG, BILL WOODYARD AND ANNE RITCHEY
1/18/85	REVIEW REVISED DFA BILL FOR GOVERNOR'S OFFICE
	PREPARE REVISED BILL FOR DISTRIBUTION
	INTRAOFFICE CONFERENCE ANNE RITCHEY, BILL WOODYARD AND PAT MORAN
	DRAFT MEMO TO ACCOMPANY REVISED BILLS
	INTRAOFFICE CONFERENCE JOHN SELIG, BILL WOODYARD AND ANNE RITCHEY
	REDRAFT LEGISLATION
	INTRAOFFICE CONFERENCE JOHN SELIG AND ANNE RITCHEY
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE PAT MORAN AND BILL WOODYARD RE LEGISLATIVE MATTERS
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	CONFERENCE WITH JOHN SELIG AND ANNE RITCHEY
1/19/85	TELEPHONE CONFERENCE WITH GOVERNOR'S OFFICE
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

STATEMENT OF SERVICES RENDERED . S OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
1/21/85	TELEPHONE CONFERENCE WITH MR. NEPTUNE
1/23/85	REVIEW GOVERNOR'S PROPOSAL TELEPHONE CONFERENCE WITH MICHAEL DRAKE DRAFT DOCUMENTS PREPARATION FOR CONFERENCE TELEPHONE CONFERENCE WITH GOVERNOR CLINTON'S OFFICE
1/24/85	CONFERENCE WITH LASATER AND E. F. HUTTON CONFERENCE WITH JOHN SELIG AND ANNE RITCHEY CONFERENCE WITH MESSRS DRAKE, ET AL. INTRAOFFICE CONFERENCE ANNE RITCHEY, ROBERT THACKER AND JOHN SELIG RE BONDS CONFERENCE WITH LASATER AND HUTTON REPRESENTATIVES TELEPHONE CONFERENCE WITH MR. POTTS RE LEGISLATIVE BOOKLET ATTEND MEETING ON LEGISLATIVE MATTERS CONFERENCE WITH LASATER AND HUTTON REGARDING LEGISLATIVE MATTERS LEGAL RESEARCH REGARDING SCHOOL REVOLVING LOAN FUND
1/25/85	LEGAL RESEARCH REGARDING RADIO EQUIPMENT LEASE
1/28/85	TRANSMIT DOCUMENTS TO STEVE BENDER RESEARCH ON LEASE CONFERENCE WITH THOMASSON, MOUDY AND DRAKE
1/29/85	RESEARCH RE STATUTORY AUTHORITY
1/30/85	REVIEW AND RESEARCH STATUTES
1/31/85	TELEPHONE CONFERENCE WITH MR. BEALE AND MS. ESTERLBIN

MITCHELL, WILLIAMS, SELIG, JACKSON & THURLEN

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 5 - LEASING PROPOSAL

DATE	SERVICE PERFORMED
1/08/85	LEGAL RESEARCH REGARDING ISSUES PRESENTED BY HUTTON PROPOSALS
	LEGAL RESEARCH REGARDING BOND AUTHORITIES
1/09/85	TELEPHONE CONFERENCE REGARDING LEGISLATIVE COUNCIL MEETING
	ATTEND LEGISLATIVE COUNCIL MEETING
	CONFERENCE WITH MR. DR. KING
1/10/85	CONFERENCE WITH E. F. HUTTON AND LASATER PEOPLE TO PREPARE FOR PRESENTATION TO THE GOVERNOR
	CONFERENCE WITH LASATER/HUTTON WORKING GROUP AND GOVERNOR'S STAFF
	CONFERENCE WITH LASATER AND HUTTON PEOPLE
1/13/85	CONFERENCE WITH LASATER, HUTTON AND RANEY
	CONFERENCE WITH MESSRS DRAKE, LOCKE, ET AL.
	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG AND BILL WOODYARD
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN
1/24/85	CONFERENCE WITH LASATER AND E. F. HUTTON
	CONFERENCE WITH MESSRS DRAKE, ET AL.
	INTRAOFFICE CONFERENCE ANNE RITCHEY, BILL WOODYARD, ROBERT THACKER AND JOHN SELIG
	INTRAOFFICE CONFERENCE ROBERT THACKER, JOHN SELIG AND ANNE RITCHEY
	REVIEW LEASING PROPOSAL
	INTRAOFFICE CONFERENCE BILL WOODYARD, JOHN SELIG AND ANNE RITCHEY
1/25/85	INTRAOFFICE CONFERENCE BILL WOODYARD, ROBERT THACKER AND JOHN SELIG

MITCHELL, WILLIAMS, SELIG, JACKSON & THACKER

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 5 - LEASING PROPOSAL

DATE	SERVICE PERFORMED
	INTRAOFFICE CONFERENCE ANNE RITCHEY AND ROBERT THACKER
1/29/85	INTRAOFFICE CONFERENCE BILL WOODYARD AND JOHN SELIG
	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG AND ROBERT THACKER RE LEASING AUTHORITY
1/30/85	INTRAOFFICE CONFERENCE ROBERT THACKER AND ANNE RITCHEY RE LEASES
	INTRAOFFICE CONFERENCE ANNE RITCHEY AND BILL WOODYARD RE PROJECTS FOR LASATER

MITCHELL, WILLIAMS, SEIG, JACKSON & THOMAS
STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 5 - LEASING PROPOS. L

DATE	REIMBURSABLE EXPENSES	AMOUNT
1/23/85	CHECK TO THE LITTLE ROCK COUNTRY CLUB	\$359.20
	TOTAL EXPENSES	\$359.20

Lasater & Company

INVESTMENT BANKERS

May 30, 1985

Mr. Bob Snyder
Executive Vice-President
T.J. Raney & Sons, Inc.
Investment Bankers
3600 Cantrell Road
Little Rock, Arkansas

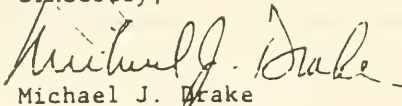
re: Legal services rendered to date:
Mitchell Law Firm

Dear Bob:

I am enclosing a copy of recent billings from the Mitchell law firm which have been paid by Lasater & Company. The legal services rendered, as you can see from the detail sheets, were in support and advancement of our group efforts on the Arkansas State Police Communications System Financing. Since we (Raney, Hutton, Lasater) agreed to split expenses, liability and fees on this transaction, we would appreciate receiving your check for one-third of these legal fees in the amount of \$10,716.98. I fully expect our group to be reimbursed for these expenses from bond proceeds and look forward to receiving your check as soon as possible.

Thank you in advance for your assistance in this matter.

Sincerely,


Michael J. Drake
Senior Vice-President

MJD:cb

encl.

cc: Dan R. Lasater
Rick Knox

MEMORANDUM

TO: BETSEY WRIGHT
 FROM: MIKE GAINES
 DATE: MAY 13, 1945
 SUBJECT: ASP COMMUNICATIONS SYSTEM

The financing I will be discussed by the Communications Sub-committee tomorrow and by Legislative Council on Friday.

The Capital Resources group, which did not get the ASP Commission's nod, intend to contest the award to Ruckon, Lasater, Roney on the following points:

1. Capital offered a fixed rate rather than a floating rate, and
2. Capital's proposal was based on monthly payments by the state to repay the debt while R.L.R. based their proposal on payments every 6 months.

Capital points out that the legislation (written by R.L.R.) requires monthly payments (Act 317 attached, see highlights on page 3).

A proposal based on 6 month payments can be lower because it allows the state to earn interest on the pledged revenues during that 6 month period. Capital argues that this is not allowed under the law as written.

I have discussed this with Sam, and he is looking into it.

MG:js

DKSN018184

LAW OFFICES

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

H. MAURICE MITCHELL
 RICHARD A. WILLIAMS
 JOHN S. SELIG
 JOSEPH W. GELLINE
 W. CHRISTOPHER BARRIER
 JERRY D. JACKSON
 JIM GUY TUCKER
 EDDIE G. SAYRE
 SYMON FREELAND
 KENT FOSTER
 ALLAN GATES
 PAT MORAN
 W. H. L. WOODYARD, III
 MICHAEL C. O'MALLEY
 JOHN C. LESSEL
 DOAK FOSTER
 JAMES E. SMITH, JR.
 JEAN D. STOCKBOWEN
 ANNE RITCHIE

1000 SAVERS FEDERAL BUILDING
 CAPITOL AVENUE AT SPRING STREET
 LITTLE ROCK, ARKANSAS 72201
 TELEPHONE 301-376-3151

DEBRA K. BROWN
 SCARL GUNTER
 CRAIG WESTERHOOF
 W. KURT LOCKHART
 JOYCE KIRKHEAD
 DOUGLAS B. WARD
 MARCELLA J. TAYLOR
 TIMOTHY W. GROOMS
 ROBERT L. THACKER
 RICHARD C. JANS

OF COUNSEL
 HENRY E. SPITZBERG

May 16, 1985

Mr. Ed Erxleben
 Director of Purchasing
 Office of State Purchasing
 Department of Finance and
 Administration Building
 Third Floor
 7th & High Streets
 Little Rock, Arkansas 72201

Dear Mr. Erxleben:

You have asked our opinion on a question of interpretation of Section Five of Act No. 814 of 1985, the Department of Arkansas State Police Communications Equipment Leasing Act (the "Act"). The question presented is whether Section Five of the Act requires that Lease Payments, as defined in Section Three of the Act, are required to be made on a monthly basis to investors who purchase an interest in a Lease Agreement authorized by the Act.

Section Five dedicates several categories of driver's license fees as a revenue stream for Lease Payments and establishes the methods for transferring those fees from the collecting agencies to the Department of Arkansas State Police Communications Equipment Lease Fund (the "Lease Fund") and from the Lease Fund to whomever is to hold those funds for the benefit of those persons who have either leased the communications equipment directly to the Department or those persons who have purchased an interest in the Lease Agreement in return for a percentage of the Lease Payments.

Section Five requires that license fees are to be transferred "when received" to the Lease Fund. Fees deposited in the Lease Fund are transferred monthly out of that fund

RECEIVED
 1985 MAY 17 PM 3:16
 ARKANSAS STATE POLICE
 FISCAL AFFAIRS

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

Mr. Ed Exleben
May 16, 1985
Page Two

in an amount equal to "payments to cover the costs under the Lease Agreement." At the end of each quarter, any pledged revenues remaining in the Lease Fund in excess of a reserve of 30% of a fiscal quarter's requirements of Lease Payments are removed from the Lease Fund and deposited in the State Treasury as special revenue to the credit of the Arkansas State Police.

Section Five does not state to whom the monthly transfers out of the Lease Fund are to be made. Therefore, there is no requirement that these transfers be made to the ultimate payee or lessor under the Lease Agreement. The procedure for transfer allows for maximum flexibility in the structuring of the financing of the equipment while also limiting the amount of revenue that can be accumulated at any time in the Lease Fund. As drafted, Section Five reflects standard practices in tax exempt revenue financings.

The monthly transfer of license fees equal to the Lease Payment requirements and quarterly "cleaving out" of the Lease Fund limits the amount of license fees which can be used to make Lease Payments to the amount actually required by the Lease Agreement.

In a financing of this size (twenty million dollars plus), involving hundreds of investors, the Lease Payments will ordinarily be deposited with a trustee bank which will hold the funds for the benefit of the investors and disburse the funds as required by the terms of the trustee's agreement with the investors. Payments are ordinarily made annually or semiannually to investors. The trustee, however, usually requires transfers to its trust funds on a monthly basis in order to ensure that sufficient funds are available to make payments to investors when due.

Interest earnings on funds transferred to the trustee ~~inure to the benefit of the state and are used to~~ make payments to investors.

If you have any other questions concerning the Act, please do not hesitate to call.

Sincerely yours,

MITCHELL, WILLIAMS, SELIG,
JACKSON & TUCKER

... *Dan R. Selig*

BSA

Depo of John W. Myers In Re: Whitewater 2-20-96 Cr63624.0

MS-11-2

114) for myself in 1982.

115) Q And did you graduate from high school?

116) A Yes.

117) Q Where did you graduate from high school and

118) what year, please?

119) A St. Michaels Central High School in

120) Chicago, Illinois.

121) Q What year was that?

122) A Excuse me, I didn't say that. 1956.

Page 11

11) Q During the period 1984 through 1985, were

12) you an actuary at that time?

13) A Yes, I became an actuary or received the

14) actuarial designations in 1978 and '79. So ever

15) since that time, I've been in the practice of

16) actuarial science.

17) Q Could you give a brief description of what

18) exactly an actuary does or what it means to be an

19) actuary?

100) A It means that you should have a

101) mathematical background. You go through a whole

102) bunch of tests. The practice of actuarial science,

103) if you are a life insurance actuary, that's the guy

104) that develops the premium and cost for a life

105) insurance policy. I am a pension actuary and so I

106) develop and certify the contribution amounts that are

107) necessary to fund a qualified retirement plan in

108) accordance with the Treasury regulations.

109) Q Were you doing that same kind of work in

110) 1984 and 1985?

111) A Yes.

112) Q You mentioned a number of different

Page 12

11) certifications and licenses you had, that you have

12) right now.

13) A Yes.

14) Q How many of those did you have during 1984

15) through 1985?

16) A All of them.

17) Q Are you familiar with the bond underwriting

18) that was undertaken in 1985 to provide capital for

19) the purchase of a new police radio system for the

100) state of Arkansas?

101) A Yes, I am aware of it.

102) Q And how are you aware of that?

103) A I was asked by Johnny Mitchum after the

104) successful bidder had been selected, to review their

105) decision and give them opinion as to the financial

106) aspects of it, which I did.

107) Q And had you known Mr. Mitchum before he

108) hired you to do this?

109) A Yes.

110) Q How did you know him?

111) A John owned a hospital in Batesville.

112) Arkansas that he had purchased. I believe it was a

Page 13

11) year or two before that, that had a defined benefit

12) pension plan. And I was hired to be the actuary to

13) do the certifications and to terminate that

14) retirement plan.

15) I completed that work and I suppose that's

16) some time in late 1984 when that was done.

17) Q How did he come to hire you to do the

18) analysis that you just described?

19) A John called me up and asked me whether or

100) not I could review it and do the numbers for him, do

101) a calculation for him, and I said yes.

102) Q When he called you, had he told you that a

103) decision had already been made on which underwriter

104) to pick?

105) A Yes.

106) Q Do you know how soon after the decision had

107) been made you were called?

108) A I'm not certain. I've got to say that it

109) was not a lengthy period of time. I've got to say it

110) was something like maybe two weeks or so, but that's

111) a guess.

112) Q And I realize this was a while ago, but I

Page 14

11) wondered if you could explain to me, when he called

12) you up to ask you to do the work, how he described

13) what task he wanted you to perform and what he asked

104) you, what you were capable of doing

105) A He asked me whether I could look at the

106) three or four different proposals that had been

107) presented to the state police board, and whether I

108) could run some numbers to see whether or not the

109) bid

110) that they had selected was in fact the best of the

111) four bids. And that was a present-value calculation,

112) and my memory says that's what I did.

113) Q Did he ask you to do a present value

114) calculation or is that something that you offered to

115) do?

116) A Well, he asked me to do a study that would

117) confirm what their findings were. And in my

118) judgment, the way to do that was, I believe, to do

119) present value numbers.

120) Q Had they done a present value analysis

121) previous to the one you did?

122) A I don't know.

100) Q Were you given a copy of a document that

Page 15

11) identified what their findings were?

12) A I believe so.

13) Q Do you recall what format that was in?

14) A No, I don't recall.

15) Q And just so we're clear, you stated that

106) you were asked to do a study to confirm what their

107) findings were. Was that the commission's findings or

108) do you know whose findings he was referring to?

109) A Yeah, yeah, I mean their decision to go

110) with the winner as to whether or not in my opinion

111) actuarially, whether I concurred with that decision.

112) Q So you weren't, per se, being asked to

113) confirm you were being asked whether you agreed with

114) their choice of the firm that they chose?

115) A I believe that's right.

OFFICE OF THE GOVERNOR



MEMORANDUM

To : Governor Simon / Ritz, Wright Date: 5/1/85
From : Mike Hanna (1) Landers should be told
bid must be price
Subject: FSP Communication K (2) KRocks let in under
under help be Queller to stop
this agreement for cheaper
equipment - Bill Crane

The State Police Commission is meeting Friday to review proposals for financing the communication system. The following are Tommy Goodwin's observations of where things stand:

very simple - appears to have ~~nothing~~ ^{nothing} in support from
another window to the location.

Johnny Michan - solidly behind center.

Tennison - Lester

Madison - probably Leuten, since McEwen, Bush did not submit program

Give Ref. - probably Lester

Lohefellen - ?

DKSN027162

The - we have made a decision
 for our "street" to be the
 "Latter part in our meeting, I
 had been been seen it was
 quite a large AS, the first of the

State Police

STATE POLICE COMMUNICATIONS AND ANALYSIS

Attached are the analysis sheets used by the State Police Commission to arrive at the decision to award the financing to E. F. Huston, T. J. Haney and Lassiter.

The following numbers are taken directly from that analysis. The NPV (Net Present Value) analysis is used to equate different payment terms. It takes into account the fact that the State will have the use of the drivers license revenues for 12 months at the beginning and every 6 months thereafter under the Huston proposal. Under the First Capital proposal, the State will pay monthly.

Bidder	Total Net Payments	NPV Net Payments
First Capital	\$ 12,984,461	\$ 12,984,461
Haney-Huston	11,735,358	12,401,441
Difference:	1,249,103	583,020

If this same analysis were considering Huston credit for his reserve fund at 11.5% instead of 10% and used 9.5% as the NPV factor to reflect the short-term rates available for the investment every 6 months of the drivers license revenues, the results would be:

Bidder	Total Net Payments	NPV Net Payments
First Capital	\$ 12,984,461	\$ 12,405,432
Haney-Huston	11,581,311	12,492,432
Difference:	1,403,150	99,000

STATE POLICE COMMUNICATION AND ANALYSIS

1. PRESENT VALUE STUDY

DISCOP	DISP
FIRST CAPITAL CORPORATION	18,127,700
RANEY - LUTTON - LASSITER	18,127,700
STEPHENS	18,127,700
DAVIS SULLIVAN	18,127,700
DAVIS SULLIVAN II	18,127,700

4.25 35

2. OTHER CONSIDERATIONS

A. Timing of Payments

First Cap tells the State to make payments under the Rane-Lass-Lutton - Lassiter bond. The payment is not due until the 15th month. The State thus has the use of the money for a longer period and further serves to reduce the cost.

B. Issue of Bond Issue

The under the bond issue the cost to the State is reduced. The proceeds from the bond issue are not added to the State's cash but are used to pay the bond.

C. The Bond Issue and the State's Cash

It appears the State should not be forced to pay the cost of the bond issue but should be able to extend the cost.

3-4

Jack Young - M. Drake - John Seig
mahon, Joe, Mike G. -

555 - State Police

10 year lease/purchase - Union Gov't Leasing should
be lessor - assigned ownership to trustee - sell cert participants
4.7% rate - net to state -

Will insure project - 1% cost for insur
Have Dr/ licence revenue as pledge to insure
biennial appropriation - w/o pledge insur be
about 1.5%

- 26,420,000 total funding

annual debt service - 6 mos 3,500,000 / net 3,050,000

23,500,000 needed

DKSN017800

201 Q Did she say anything more to you during
202 that conversation about the picking up of this cash

Page 319

203 at the bank or anything Mr. Lindsey said to you?

204 A No. I think that is all I remember.

205 Q I just want to vacuum your knowledge about
206 this matter.

207 MR. COHEN: What a strange word to hear
208 coming from you. That can be used in an innocent
209 way. I understand.

210 MR. GIUFFRÀ: Some people say

211 BY MR. GIUFFRÀ:

212 Q Did you recall anything more about your
213 conversation with Mr. Lindsey?

214 A No.

215 Q Have you spoken to anyone else about this
216 conversation you had with Ms. Cooper and then the
217 conversation with Mr. Lindsey, other than your
218 lawyer?

219 A And I just now remembered it and told him.

220 MR. COHEN: Other than your lawyer.

221 BY MR. GIUFFRÀ:

222 Q Did you discuss this with the Independent
223 Counsel?

224 MR. COHEN: None of your business what she

Page 320

225 has discussed with the Independent Counsel. It would
226 be in my judgment a violation of all sorts of
227 things.

228 MR. GIUFFRÀ: We actually have asked
229 witnesses whether they have in fact said this. This
230 has been in public testimony. What they have told the
231 Independent Counsel.

232 MR. COHEN: Before I would let her answer
233 that question. I would have to consult with people as
234 to the Independent Counsel.

235 BY MR. GIUFFRÀ:

236 Q Is there any documentation reflecting this
237 communication with Ms. Cooper?

238 A No.

239 Q Why did your role change between the -

240 A Wait. I didn't finish.

241 Q Okay. Get ahead.

242 A I'm in trouble again, aren't I?

243 MR. COHEN: Not at all.

244 BY MR. GIUFFRÀ:

245 Q You have the Cooper conversation and the
246 Lindsey conversation.

Page 321

247 A Well, then there is a third conversation.

248 I was having a conversation at some point, and I
249 don't remember where or why or how or what the
250 subject was, but the issue of the '90 campaign came
251 up. I was talking to Bob Nash, and he told me that
252 once Bruce had asked him to go to Perry County and
253 pick up some get out the vote cash for him. That's
254 all I know about that.

255 Q That's all he said. Did he say whether

256 Mr. - did Mr. Nash indicate he had been asked about

257 this by the FBI?

258 A No.

259 Q Did you report what Mr. Nash said to

260 Mr. Lindsey?

261 A No.

262 Q You had no other conversation with

263 Mr. Lindsey about picking up cash from the Perry

264 County Bank in connection with the '90 campaign?

265 A That's all I remember.

266 Q You can't remember any conversation with

267 anyone else about picking up conversation from the

268 Perry County Bank?

Page 322

269 A Not so far. I'm doing my best.

270 MR. COHEN: She went from remembering no
271 conversations to three conversations.

272 MR. COLE: It is skillful examination by

273 Mr. GiuffrÀ.

274 MR. GIUFFRÀ: Thanks. I appreciate that.

275 MR. COHEN: I think the record was it was

276 Ms. Wright who remembered the conversations. Took

a

277 break and then disgorged them.

278 BY MR. GIUFFRÀ:

279 Q Why did your role change between the '88

280 campaign and the '90 campaign? Or was it the '86

281 campaign?

282 A Why did my role change?

283 Q Because you became the state party

284 chairman? Why weren't you as actively involved in

285 the campaign of '90 as opposed to prior years?

286 A I didn't manage the '90 campaign, and I had

287 managed the prior years.

288 Q Again, you have no - in terms of the way

289 that those withdrawals were done for the get out the

290 vote drives, you don't have any sense as to how it

Page 323

291 could have been done differently?

292 A I don't know how they did it.

293 Q Did Mr. Nash indicate to you what use was

294 made of the money?

295 A No.

296 Q Do you have any idea as to what use was

297 made of the money?

298 A No. I didn't have any further discussion

299 with him.

300 Q Last question. Why did your role - why

301 were you no longer the Governor's campaign manager?

302 A Well, I left the Governor's staff toward

303 the end of 1989, though I didn't technically go off

304 the payroll until January of '90. So I was no longer

305 working for him, and I didn't want to run the

306 campaign in '90.

307 Q Who became the campaign manager?

308 A Gloria Cabe.

309 Q C-a-p-e?

310 A C-a-b-e.

311 Q Have you ever spoken to Ms. Cabe about the

312 withdrawal of cash from the Perry County Bank?

Lasater Farm
11625 S.E. Co. Hwy. 475
Ocala, Florida 32674
phone 904-245-2455

December 14, 1983

The Honorable Bill Clinton
Governor of Arkansas
State Capitol Building
Little Rock, Arkansas 72201

Dear Bill:

It was a pleasure to see you yesterday at the Hot Springs "Christmas to Share" Program and to visit with you by telephone last night.

We wanted to follow up with the details of our conversation in this correspondence. With regard to the dispersal of the securities owned by Mount Hood Pension Fund, National Investors Life Insurance and National Investors Pension Fund, we have been working hand-in-hand with their personnel toward an orderly sale of their holdings and, in fact, we handled the first stage of the dispersal in November when we participated in the liquidation of \$30 million of Illinois bonds. The Companies have been our clients for quite some time and our account representatives are very familiar with the portfolios which is extremely important in the sales process.

It is our belief that an orderly dispersal of these securities will benefit the policy holders and the shareholders of these Companies; thereby, benefiting Arkansas citizens the most. To date, the dispersal has been handled within the State; therefore, any gains or losses have remained in Arkansas.

As we discussed, rumor has it that co-managers of First Boston and Stearns Inc. will be appointed the first of the year to consummate any future transactions in the portfolio. It is estimated that there is approximately \$1.9 billion of debt securities which it is expected will be sold, and if First Boston is appointed, it will mean that a larger percentage of the proceeds will be leaving Arkansas.

Knowing that we have the same dedication to the State of Arkansas, I do not believe that you will want this to happen. However, we do understand the problems which you face at the Insurance Commission and are cognizant that you may have difficulty in maintaining the status quo as far as the dispersal is concerned.

Faced with that reality, we hope that you will be able to take the initiative in strongly suggesting that Lasater & Company may be included with First Boston and Stearns Inc. as a third co-manager. This would mean that a majority of the business would stay in Arkansas.

DKSN027455

Page Two
 The Honorable Bill Clinton
 December 14, 1983

With regard to the Board of the Arkansas Housing and Development Agency, it is our understanding that the chairmanship rotates annually. Based on this understanding, we would like to recommend our mutual friend George Wright for the chairmanship. George has expressed an interest in the chairmanship and we believe that he would take the time and devote the energy necessary to do a good job.


In addition, it is our understanding that there will be vacancies in January on the AHDA Board and we would like to strongly recommend Dale Taylor, an attorney with First Commercial Mortgage Company. His background and professional capabilities make him particularly suited for service on this Agency Board.

During the recent Special Session, legislation passed creating a commission to study the possibility of creating an agency similar to the AHDA to do public school financing. We would like to recommend Michael Drake, Vice President of Public Finance at Lasater & Company to serve on the Commission. Michael was born at Judsonia, Arkansas and his undergraduate degree is from Harding College. Michael did his graduate work at Wayne State University in Urban Planning and Fiscal Affairs and post graduate work at the Harvard-MIT Joint Center for Urban Studies. With his educational background and his knowledge of Arkansas and fiscal matters, we believe he is perfectly suited for the Commission and that he will make a significant contribution.

Finally, let me again say that the Insurance Companies' dispersal of its holdings is very important to us and we sincerely hope that there is some way to make certain that we do not lose our position.

Again, we appreciate your able assistance.

Sincerely,


 Dan R. Lasater

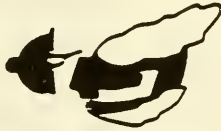
DRL/is

cc: Maurice Smith

DKSN027456

The Honorable Bill Clinton
Governor of Arkansas
State Capitol Building
Little Rock, Arkansas 72201

Leseler Farm
Rt. 6, Box 070
Ocala, Florida 32670



DKSN027457

LAW OFFICES

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

B. MAURICE MITCHELL
 RICHARD A. WILLIAMS
 JOHN S. SELIG
 JOSEPH W. GELSHINE
 W. CHRISTOPHER BARRIER
 JERRY D. JACKSON
 JIM GUY TUCKER
 EDWARD G. SAYRE
 BYRON FREEDLAND
 KEVIN FOSTER
 ALLAN GATES
 PAT MORAN
 W. H. L. WOODWARD, III
 MICHAEL C. O'MALLEY
 JOHN C. LESSELL
 BEVERLY BARNETT
 JEAN D. STOCKBARGER

1000 SAYERS FEDERAL BUILDING
 CAPITOL AVENUE AT SPRING STREET
 LITTLE ROCK, ARKANSAS 72201
 TELEPHONE 301-375-3131

DEBRA K. BROWN
 SUSAN GUTTER
 ANNE RITCHIE
 CRAIG WESTERBROOK
 JAMES E. SMITH, JR.
 W. KERRY LOCKHART
 DOUG FOSTER
 JOYCE KIRKHEAD
 DOUGLAS B. WARD
 MARCELLA J. TAYLOR
 TIMOTHY W. GROOMS
 ROBERT L. RACKEN
 RICHARD C. JAFFE

March 8, 1985

OF COUNSEL
HENRY E. SMITZBERG

Mr. Sam Bratton
 Office of the Governor
 State Capitol
 Little Rock, Arkansas 72201

Re: State Police Financing Bill

Dear Sam:

Enclosed is an original and three copies of an amendment which will substitute the language of the bill we discussed over the phone today for the language of the existing bill.

Please review the amendment and let me know if you have any questions or want me to do any redrafting.

With best regards, I am

Cordially yours,

MITCHELL, WILLIAMS, SELIG,
JACKSON & TUCKERBy *[Signature]*
John S. SelligJSS/lcj
Enclosures

DKSN017843

TO: JVVDATE: 5 11 35FROM: buRE: Knox Nelson: State Police Communications

- | | |
|---|---|
| <input type="checkbox"/> Immediate action | <input type="checkbox"/> No action required |
| <input type="checkbox"/> Draft reply for Governor | <input type="checkbox"/> Please see me |
| <input type="checkbox"/> Reply or act in 1 week | <input type="checkbox"/> File |
| <input type="checkbox"/> Prepare report | <input type="checkbox"/> For your information |
| <input type="checkbox"/> For comment | |

REMARKS:

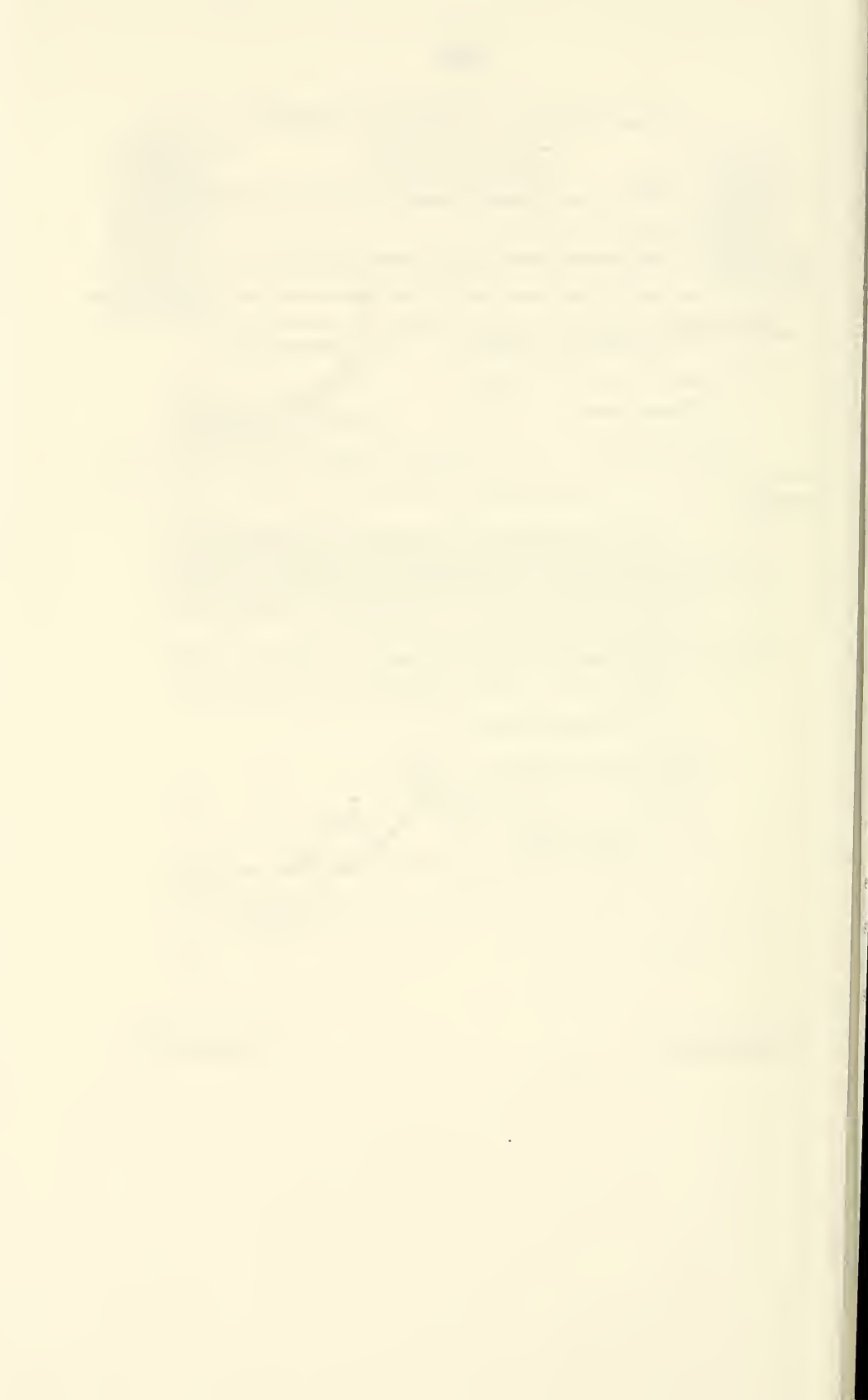
From what I am picking up through Mahlon is that Knox intends to call a special meeting of his telecommunications study committee this week and that he is aiming for not letting a committee go off with investment firm but rather to having money from PERC because he is talking about a low-interest loan but there is no way to justify that as the required PERC "prudent investment"

- I have alerted Drake and suggested that they get an AS? commissioner to set an appointment with Senator Nelson ASAP to see if he has any questions about the proposal.

Any other suggestions?

*No - Sonoma
Can Nelson will*

DKSN018182



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, MAY 1, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:18 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

I am going to ask our witnesses if they please would stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. Thank you.

Counsel, are you representing both Mr. Drake and Mr. Lasater?

Mr. FEINSTEIN. Yes, I am.

The CHAIRMAN. So that's the reason you are in the middle there.

That's a great tie you have on.

Mr. FEINSTEIN. Thank you.

The CHAIRMAN. Yours and Senator Mack's, you show brightness, et cetera.

I am going to ask Mr. Lasater and Mr. Drake if they have any statements that they would like to make before we start?

Mr. LASATER. I do.

The CHAIRMAN. Mr. Lasater, we would be happy to receive your statement.

SWORN TESTIMONY OF DANNY RAY LASATER PARTNER, COLLINS, LOCKE & LASATER LASATER & COMPANY INVESTMENT BANKERS

Mr. LASATER. Thank you.

Good morning, Mr. Chairman and Members of the Committee.

I am pleased to appear here today and answer your questions.

Senator SARBANES. Mr. Lasater, that microphone will move. You can bring it in closer to you. I think that will help a bit so we can hear you a little better.

Mr. LASATER. OK. For the past 10 years, I have often been the subject of inaccurate and misleading news articles. Outrageous and

(2585)

totally false stories about me have appeared in both the local and national newspapers and magazines. A good example of that was in this morning's Wall Street Journal where I was called a "convicted drug dealer" by Mr. Simpson. And I challenge Mr. Simpson and The Wall Street Journal at this time to prove any evidence that they have on that, because that has not been the case.

Political opponents of Governor and now-President Clinton have sought to use this false information for political advantage. In the process, my reputation has been smeared and my business interests have been damaged. Most painful to me, my family has suffered from these unfair attacks. I hope today's hearing will give me an opportunity to finally set the record straight.

In all the attempts to use me to attack the President, what has been lost is my real story and my right to restore my good name and to teach my children to be good citizens. My story is simple.

In the 1980's, I was an owner/operator of my fourth successful business. My company, like many businesses around the Nation, did business with the State of Arkansas. Like many businessmen and other citizens throughout the country, I contributed to the campaigns of politicians like yourself, including then-Governor Bill Clinton. Neither the Governor nor his administration showed me any favoritism.

In the 1980's, I also made mistakes in my personal life. I became addicted to cocaine. I pled guilty to charges of possession and social distribution of cocaine and was incarcerated for nearly a year. Contrary to many inaccurately published reports, however, my activities had no connection whatsoever with dealing drugs or laundering money. I lost my securities dealer license by decision of a Clinton appointee and had to sell my business. I hurt my family and embarrassed my friends. Since that time, I've worked hard to make amends, to rebuild my family, and to dedicate myself to God.

Your investigators know all about these problems and that time. They know that the Governor had no connections to those activities. They know that it has never been alleged that I committed any fraudulent act or lied in the course of any investigation.

My wife and children have been forced to relive that difficult period each time some new effort is made to smear the President with exaggerated allegations about me. You have the right to ask those questions again. Since you already know the answers, however, I simply ask that you do so only upon careful consideration of the rights of my wife, family, and friends.

What saddens me most about the matter is the pain and problems it continues to cause my family and others in Arkansas who were associated with me. At the time, I thought that if I admitted guilt, took responsibility for my actions, and served the sentence imposed on me by the court, I would have paid my debt to society and would be permitted to put the incident behind me and get on with my life. Unfortunately, that has not been the case.

In every election since that time in which Bill Clinton has been a candidate, efforts have been made to use my past problems against him. I continue to hope I can put this particular part of my life behind me, and perhaps my appearance here today can finally close the book on that subject.

Some of you can identify with the pain of unfair allegations of improper conduct. The difference, however, is that when you confront those stories, you chose to run for office. Please remember that when my family and I confront them, we have made no such choice to enter the public arena. Nevertheless, I will answer the questions truthfully, completely, and candidly. Hopefully, this time will be the last.

Before answering your questions, I would like to share with you some information about my personal background. I was born in Arkansas in 1943, but I grew up in Indiana. After high school, I went to work for McDonald's and spent 4 years with that company learning the fast-food business. With partners, I then started my own fast-food chain, Scotty's Hamburgers. That company did well, and we went on to start another national restaurant chain, Ponderosa Steakhouse.

Ponderosa was a tremendous success, and in 1972, I sold my interest in Ponderosa for about \$20 million. After the Ponderosa sale, I turned my attention to horse breeding and racing. I owned successful horse farms in Kentucky and Florida. In 1980, I was a co-founder of a securities firm called Collins, Locke & Lasater, which later came to be called Lasater & Company.

I mention these business successes not to boast, although I certainly am proud of the companies that I built and the horses I raised, but rather because my background is important to put into context the events in Arkansas in the 1980's that this Committee is investigating.

For example, it is well known that I was a political supporter of Bill Clinton and that I made contributions to his campaign for Governor of Arkansas in the 1980's. During that period, I could easily afford to contribute to the political candidates I thought were best qualified for public office, and Bill Clinton was only one of the candidates I supported. I doubt that any Member of this Committee would argue with me when I say that I don't believe there is anything wrong with a citizen contributing to the political campaigns of the candidates he supports.

You also should know that I, like thousands of citizens who make contributions to your political campaigns, contributed to Governor Clinton and the other candidates I supported without expecting any favors or special treatment in return. More important, I never received any special treatment from Governor Clinton or anyone on his staff. To the contrary, on the one occasion when I complained to Governor Clinton that Lasater & Company was not receiving its fair share of the State bond underwriting business, he simply told me that we should present our case to the appropriate staff if we felt we were not being treated fairly. He did not take any action on our behalf, and our position among the firms that were underwriting State bond business never improved.

Governor Clinton did not take any action on my behalf. It appeared that he wanted to avoid any appearance of giving me preferential treatment. Even though Lasater & Company was the second largest capitalized securities brokerage firm in Arkansas at the time, we stayed on the bottom tier of firms handling State bond business and never moved up to a higher tier. In my opinion, not only did I not receive any preferential treatment, I may even have

received less consideration than I would have received if I had not known the Governor.

You also should know that after my criminal conviction my securities license was revoked in August 1987, by the State Securities Commissioner that Governor Clinton had appointed, Beverly Bassett Schaffer. Because I retained an investment interest in the business to which I sold Lasater & Company, Ms. Bassett Schaffer was extremely vigilant in her oversight of the operation of that firm, advising it in April 1989, that its license would be revoked if I ever acted in any manner to control its operations.

I know that Ms. Bassett Schaffer has appeared before this Committee, so you do not need me to tell you she was a strong, independent regulator with impeccable credentials and character. She certainly never gave me any special treatment. In fact, I think she was particularly vigilant in my case to avoid any appearance that her department was going easy on me. This is the second time I thought I might fairly be entitled to more consideration from the State, but like Governor Clinton in 1984, Ms. Bassett Schaffer was careful to avoid taking any action that might appear to give me preferential treatment.

I would also like to say a few words about my relationship with President Clinton's family. I first met the President's mother, the late Virginia Kelley, at Oaklawn Park in Hot Springs, Arkansas in the 1970's. Mrs. Kelley was an avid horse racing fan, and all of us in the small community of Arkansas racing came to know her well. She was a wonderful woman—warm, friendly, outgoing—and we all miss her very much.

Mrs. Kelley was very proud of her two sons, Bill and Roger. I met Roger first, when he was working as a musician in Hot Springs. At some point, Mrs. Kelley introduced me to her other son, the Governor, when he was at Oaklawn Park. I think I probably would have supported Bill Clinton in any event, but knowing and liking both his mother and his brother, it was easy for me to become a strong political supporter of the Governor.

Much has been made of the fact that Roger Clinton worked for me a few months in 1983. I don't even remember whether it was Mrs. Kelley or Governor Clinton who asked if I would give Roger a job, but one of them did so. Roger was interested in horse racing, so I gave him a job as a stablehand at my Florida horse farm. Roger did the same work and received the same pay as the other stablehands who worked for me. At that time, I employed hundreds of people in my businesses, and I gave jobs to the relatives of other friends and acquaintances. I never expected anything in return, and I never received anything in return.

The last thing I would like to mention is a myth that has been repeated over and over in press articles about me. This is a classic example of how careless reporting can create a false impression. I would hope that the Members of the Committee are sensitive to that kind of reporting and will understand my desire to set the record straight. It has been reported many times that Governor Clinton gave me a "pardon" after my drug conviction. That never happened, and I'd like to tell the Committee what really took place.

In 1989, I wanted to be able to go hunting with my children, but because of my prior criminal conviction I could not carry a firearm,

even for hunting. I learned that it was possible to apply to the Federal Bureau of Alcohol, Tobacco and Firearms for permission to carry a firearm for hunting purposes. Although the application was to a Federal agency, the agency required approval from the State before it would act on the application. I, therefore, submitted an application to the State Parole Board. The Parole Board eventually recommended to the Governor that the application be granted, which I understood was routine in such cases. Some time later, the Governor granted the application, and I was then able to pursue my application at the Bureau of Alcohol, Tobacco and Firearms, which ultimately approved my request.

As you can see, Governor Clinton did not give me a pardon. He did not even make the final decision on the relief that I was requesting—that decision was made by the Federal authorities. What makes these false reports about a pardon even more offensive to me is that the State of Arkansas was not even prompt in processing my request, which was completely routine and in no way unusual. Even though this was a routine request, it took a year and a half for me to obtain a State approval.

I can tell you for sure that I got no special treatment from the State on this matter. In fact, I suspect that, like the matters involving Governor Clinton and Ms. Bassett Schaffer, my request may have been processed more slowly and more carefully than that of a citizen who did not know the Governor, as to avoid any appearance of my receiving special or preferential treatment.

Mr. Chairman and Members of the Committee, thank you for permitting me to make these statements. As I have told you, I welcome the chance to appear here today and finally set the record straight. I am ready to answer any questions you might have.

The CHAIRMAN. Thank you.

Mr. Drake, do you have any statement that you would like to make?

**SWORN TESTIMONY OF MICHAEL J. DRAKE
SENIOR VICE PRESIDENT
FIXED-INCOME AND TAX-EXEMPT SECURITIES
COLLINS, LOCKE & LASATER**

Mr. DRAKE. No statement.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. No.

The CHAIRMAN. Let me ask if any of the Senators have anything?

Mr. Chertoff.

Mr. CHERTOFF. Mr. Lasater, we are going to get to the issue of special treatment in a minute. I guess, I now understand that you are complaining you were treated worse than everybody else. But first, I want to ask you, did I understand you to deny a moment ago that you were convicted for conspiracy to distribute narcotics?

Mr. LASATER. No. I said I was not a convicted drug dealer.

Mr. CHERTOFF. Well—

Mr. LASATER. I was convicted of social distribution of cocaine.

Mr. CHERTOFF. Mr. Lasater, there is no crime of social distribution of cocaine. You were convicted of conspiracy to possess and distribute cocaine, a Federal felony; isn't that correct?

Mr. LASATER. That is correct.

Mr. CHERTOFF. You were——

Mr. LASATER. But I did not sell drugs.

Mr. CHERTOFF. Mr. Lasater, you were indicted for conspiracy to possess with intent to distribute cocaine; is that correct?

Mr. LASATER. That is correct. But again, I repeat, that was on a social basis.

Mr. CHERTOFF. We will get to that in a second. But first, let's be 100 percent clear about the crime you pled guilty to. When you pled guilty, you got up in front of a Federal Judge?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. You raised your hand——

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. —and sworn an oath?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. You admitted your guilt to the crime to which you were charged; correct?

Mr. LASATER. Correct.

Mr. CHERTOFF. The crime was possession with intent to distribute cocaine; right?

Mr. LASATER. That's correct.

Mr. CHERTOFF. There is no separate crime for social distribution of cocaine, is there?

Mr. LASATER. I don't know if there is a separate crime or not. But I think there is a separate moral issue.

Mr. CHERTOFF. So you think it is morally better to give cocaine away than to sell cocaine. That's the distinction you are drawing; is that right?

Mr. LASATER. I guess that is the distinction I am drawing.

Mr. CHERTOFF. Because when you give it away, you are doing a favor to the people you give it to. Is that your thinking about it?

Mr. LASATER. I think there is a difference between selling cocaine and using it on a social basis.

Mr. CHERTOFF. Now, we are not talking about using it. We are talking about giving it to other people to use. Since you are coming up here and you have made an issue in your opening statement about questions of your character and this whole issue of what you were convicted for, let's get it straight. In your mind, you see a difference between selling drugs to other people and giving drugs to other people?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. All right. You think it's better to be giving it than selling it?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. You used to give drugs to your employees; right?

Mr. LASATER. Yes, I have.

Mr. CHERTOFF. Kind of like a bonus; right?

Mr. LASATER. No, sir.

Mr. CHERTOFF. It was kind of compensation?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Did you do it in order to control them or to have leverage over them?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Mr. Drake, you were an employee of Mr. Lasater?

Mr. DRAKE. Yes, I was.

Mr. CHERTOFF. You got cocaine from Mr. Lasater?

Mr. DRAKE. Yes, I did.

Mr. CHERTOFF. Was it your view that Mr. Lasater used cocaine as a tool to manipulate people?

Mr. DRAKE. I think that at a time, I thought that, yes.

Mr. CHERTOFF. In fact, at a time, you told that to a police investigator; right?

Mr. DRAKE. I could have.

The CHAIRMAN. Mr. Drake, would you please pull that microphone right up in front of you. You can pull it. Why don't you move your chair over a little to the left and that way you can speak into the microphone. Otherwise, we will have trouble.

Mr. CHERTOFF. As a matter of fact, do you remember an investigator named DeLaughter, Doc DeLaughter?

Mr. DRAKE. Yes.

Mr. CHERTOFF. He was an investigator with the Arkansas law enforcement authorities?

Mr. DRAKE. Yes.

Mr. CHERTOFF. You talked to him about Mr. Lasater and his cocaine activities; right?

Mr. DRAKE. Yes.

Mr. CHERTOFF. You told Mr. DeLaughter that, in your view, Mr. Lasater used cocaine as a tool to manipulate his peers?

Mr. DRAKE. If that's my statement, then I stand by it.

Mr. CHERTOFF. That's what you said in 1986; right?

Mr. DRAKE. I may have.

Mr. CHERTOFF. You also said that Mr. Lasater used cocaine to reward people or to control people that were loyal to him; right?

Mr. DRAKE. If you are reading from my statement, then that's my statement.

Mr. CHERTOFF. I think there is a copy of this statement in your package, if it's not we will get it down to you. It's "Memo to File, October 14, 1986." Now, I understand you didn't prepare this. It's a memo prepared by the investigator.

Mr. FEINSTEIN. That's not in the folder.

Mr. CHERTOFF. We have just given it to the witness. The last paragraph: "It became obvious to him," that's you, "that Dan Lasater was using cocaine as a tool to manipulate his peers and force them to serve as a buffer between the authorities and his cocaine abuse." Then it lists a number of people who were involved in getting cocaine. "Lasater also considered these people loyal to him, because he used cocaine to control them for his benefit."

Mr. DRAKE. Mr. Chertoff, I'd say that this is Mr. DeLaughter's impression of a statement I made to him. It's not a quote from me.

Mr. CHERTOFF. I understand it's not a quote. But in substance, this is what you told that investigator in 1986; isn't that correct?

Mr. DRAKE. It's a long time ago. It may be.

Mr. CHERTOFF. You are not prepared to deny that it wasn't said at the time?

Mr. DRAKE. I'm not prepared to admit or deny it.

Mr. CHERTOFF. So it stands uncontradicted.

You also went on to say in this statement that Mr. Lasater surrounded himself with police officers in order to make himself look like he's a good citizen. Do you remember saying that?

Mr. DRAKE. I don't remember saying it, no.

Mr. FEINSTEIN. Do you have a page reference?

Mr. CHERTOFF. It's the very next page. Are you prepared to deny that you said that in substance to the investigating officer in 1986?

Mr. DRAKE. I'm not prepared to deny it, no.

Mr. CHERTOFF. Now, I want to ask you, Mr. Lasater, you gave drugs to your employees; right?

Mr. LASATER. Right.

Mr. CHERTOFF. You gave drugs to your chauffeur; right? That was Chuck Berry?

Mr. LASATER. No.

Mr. CHERTOFF. Or he gave drugs to you?

Mr. LASATER. That's correct.

Mr. CHERTOFF. He bought drugs for you?

Mr. LASATER. That's correct.

Mr. CHERTOFF. You gave drugs to people you were entertaining; is that right?

Mr. LASATER. Right.

Mr. CHERTOFF. Even under-age people you were entertaining; is that right?

Mr. LASATER. Right.

Mr. CHERTOFF. I just want to make sure we have kind of your moral compass out here; that giving drugs away to your employees and to people you are entertaining, even if they are under-age, that's better than selling? You see a distinction there? That's your position before this Committee?

Mr. LASATER. I think there's a difference, yes.

Mr. CHERTOFF. Let me tell you something, I have put alot of witnesses on over the years who have done bad things. I am a firm believer that people do put things behind them and they achieve redemption. But I also know that the first step to that is honesty and accountability for something someone has done wrong. And I have to say that I am astonished to hear you say that you actually view your acts as having given drugs away to these people as somehow morally distinct from selling it.

You also say in your opening statement, Mr. Lasater, that it has never been alleged you ever committed a fraudulent act or lied in the course of any investigation. That's in your opening statement; is that right?

Mr. LASATER. It is.

Mr. CHERTOFF. Do you remember when Mr. Locke, your partner in Collins, Locke & Lasater, had a bankruptcy case in Federal Court in Arkansas?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. That was in the early 1980's?

Mr. LASATER. Yes.

Mr. CHERTOFF. There was a bankruptcy judge named Nixon?

Mr. LASATER. Yes, I remember that.

Mr. CHERTOFF. He was a Federal Judge.

Mr. LASATER. Yes.

Mr. CHERTOFF. You testified in that case?

Mr. LASATER. Yes, I did.

Mr. CHERTOFF. Again, you raised your hand and swore an oath?

Mr. LASATER. Yes.

Mr. CHERTOFF. And do you remember what the Judge said about your testimony?

Mr. LASATER. I do.

Mr. CHERTOFF. What did he say about it?

Mr. LASATER. He said it was false.

Mr. CHERTOFF. In fact, he said that you were involved with Mr. Locke in a conspiracy to hide assets from creditors; right?

Mr. LASATER. That's what he said. But that was inaccurate.

Mr. CHERTOFF. So when you say here, "It has never been alleged that I committed any fraudulent act or lied in the course of any investigation," you don't consider a finding by a Federal Judge that you lied under oath to be an allegation that you committed a fraudulent act or lied?

Mr. LASATER. No. That is an allegation.

Mr. CHERTOFF. So——

Mr. LASATER. I stand corrected.

Mr. CHERTOFF. So your prepared, sworn statement before this Committee we have already established is false with respect to this statement?

Mr. LASATER. It is false in reference to that statement. But I disagree with Judge Mixon.

Mr. CHERTOFF. Yes, but let me say something, Mr. Lasater. We did not catch you unawares with this question. You prepared this statement. You walked into this Committee Room with this statement to get in the face of this Committee and say that "it has never been alleged that I committed any fraudulent act or lied."

Having put that on the table, you now admit to us that you well and in truth know that there was a Federal Judge who accused you and made a finding that you lied under oath. Correct?

Mr. LASATER. Could I have a second?

[Mr. Lasater and Mr. Feinstein confer.]

Counselor, I didn't have that in mind when I prepared that statement. I had forgotten about it and I apologize.

Mr. CHERTOFF. You had forgotten about the fact that a Federal Judge made a statement of finding in open court that you had lied under oath and that you had been involved in a conspiracy to defraud creditors of your partner, Locke?

Mr. LASATER. Right.

Mr. CHERTOFF. When did you testify in that case?

Mr. LASATER. When?

Mr. CHERTOFF. Yes. That was in 1985, wasn't it?

Mr. LASATER. Somewhere in there.

Mr. CHERTOFF. That was around the same time you were getting contracts from the State of Arkansas to underwrite bonds for the ADFA and for the police radio system; right?

Mr. LASATER. I don't know the exact dates, but it would be in that timeframe, yes.

Mr. CHERTOFF. Well, we've already established that in the period between February 1985 and May 1985, you were involved in seeking to obtain, and ultimately successfully obtaining, bond underwriting work for you and your syndicate.

Now did you ever disclose at the time that you were dealing with State authorities to try to get this contract that a Federal Judge

had made a finding that you had lied and participated in a conspiracy to cheat creditors?

Mr. LASATER. No, sir.

Mr. CHERTOFF. You didn't think that issue of integrity was a matter that should be brought to the attention of the authorities?

Mr. LASATER. I did not disclose it.

Mr. CHERTOFF. And by the way, this testimony occurred in open court; is that right?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. So it wasn't a big secret?

Mr. LASATER. It was in open court.

Mr. CHERTOFF. In Federal Court in Little Rock?

Mr. LASATER. Correct.

Mr. CHERTOFF. That's the same Little Rock in which your firm was located and where the State Capitol was and where they were going to award the bond contract; right?

Mr. LASATER. Correct.

Mr. CHERTOFF. In fact, you met with Governor Clinton in late January or February of 1985; isn't that correct?

Mr. LASATER. I don't know the exact date, but I met with him.

Mr. CHERTOFF. You had a one-on-one meeting with him?

Mr. LASATER. That's correct.

Mr. CHERTOFF. That's with no staff present?

Mr. LASATER. No.

Mr. CHERTOFF. Not even Betsey Wright?

Mr. LASATER. Not that I recall.

Mr. CHERTOFF. No advisors?

Mr. LASATER. Not that I recall.

Mr. CHERTOFF. Just the two of you? Where was that meeting?

Mr. LASATER. At the State Capitol.

Mr. CHERTOFF. In his office?

Mr. LASATER. That's correct.

Mr. CHERTOFF. How long did it last?

Mr. LASATER. Ten minutes, maybe 15.

Mr. CHERTOFF. Just 15 minutes?

Mr. LASATER. Ten or 15.

Mr. CHERTOFF. You left that meeting with the sense that you were going to be unfairly treated or you were going to be getting less good treatment than anybody else?

Mr. LASATER. No, I came to that meeting with that feeling.

Mr. CHERTOFF. You left with what feeling?

Mr. LASATER. I left with the feeling that I did not improve my position any.

Mr. CHERTOFF. Well, I want to put up a letter that is dated February 15, 1985.

The CHAIRMAN. It's in your packet.

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. It's a letter to the Honorable Bill Clinton.

Mr. LASATER. Yes, it is.

Mr. CHERTOFF. You signed it?

Mr. LASATER. Yes, I did.

Mr. CHERTOFF. It was sent; right?

Mr. LASATER. I'm sorry?

Mr. CHERTOFF. It got sent?

Mr. LASATER. Yes, it did.

Mr. CHERTOFF. And it says: "Thank you very much for the opportunity to sit down and visit with you regarding the many issues facing Arkansas and relative to areas in which Lasater & Company can assist you in your efforts to promote and develop Arkansas." Now that refers to that meeting, the private meeting, you had with Mr. Clinton; is that right?

Mr. LASATER. I don't know that.

Mr. CHERTOFF. Well, did you have another meeting in which you sat down with him and discussed the many issues facing Arkansas?

Mr. LASATER. No, I don't think so.

Mr. CHERTOFF. So it must refer to that meeting; right?

Mr. LASATER. More than likely, yes.

Mr. CHERTOFF. That meeting occurs at the very same time that you are in court testifying about your partner's bankruptcy and in which the Judge finds that you are lying under oath. Did you mention to Governor Clinton your experiences with Federal Court that were going on at the same time?

Mr. LASATER. I did not.

Mr. CHERTOFF. Now this meeting with Governor Clinton also occurred at the same time that there was a trial going on of a man by the name of Sam Anderson. Do you remember that case?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. Sam Anderson was a lawyer in Hot Springs?

Mr. LASATER. Yes, Sam Anderson, Jr.

Mr. CHERTOFF. He was tried and convicted for narcotics?

Mr. LASATER. That's correct.

Mr. CHERTOFF. In that case, Roger Clinton testified; right?

Mr. LASATER. I believe that he did.

Mr. CHERTOFF. Roger Clinton testified in that case that you had loaned him \$8,000 to help clear up a drug debt?

Mr. LASATER. I don't recall that, but I don't dispute it.

Mr. CHERTOFF. In fact, the story behind that loan is that Roger Clinton came to you and said that someone had broken into his car and stolen about \$16,000 to \$20,000 worth of drugs belonging to a dealer; right?

Mr. LASATER. I don't remember the dollar amount. But someone did—I was told that someone broke into his car and stole drugs out of his car. That's correct.

Mr. CHERTOFF. He asked you for money because he said he was afraid the drug dealer would hurt him or hurt his mother or his brother; right?

Mr. LASATER. That's correct.

Mr. CHERTOFF. His brother being the Governor?

Mr. LASATER. That's correct.

Mr. CHERTOFF. So you gave him or loaned him \$8,000 to clear up that problem with the drug dealer?

Mr. LASATER. I did.

Mr. CHERTOFF. Now in your conversation with Governor Clinton, which is going on at exactly the same time you are in Federal Court being called a liar by a Federal Judge and at the same time that there's testimony in another Federal Courtroom in the same city where they are talking about how you gave or how you loaned

\$8,000 to Roger Clinton to clear up a drug debt, none of this comes up in the meeting?

Mr. FEINSTEIN. Mr. Chertoff, with all due respect, I think it would be—it's very unfair to this witness to be making these representations about exactly the same time without giving him some specifics on the dates.

Mr. CHERTOFF. I will say substantially the same time. The testimony and the finding of the bankruptcy judge is in January 1985; the testimony in the case involving Mr. Anderson is in February 1985; and, the meeting we are talking about occurs in late January or early February 1985, shortly before this February 15th letter.

Mr. FEINSTEIN. Could I just inquire, the finding that you referred to by the Judge in the bankruptcy case, did that take the form of some written finding of fact?

Mr. CHERTOFF. I will tell you where—not that I want to trade roles with you, counselor, but—

Mr. FEINSTEIN. No, I'm just—

Mr. CHERTOFF. An article in the Arkansas Gazette, which is a statewide paper, reporting publicly upon the Judge's statements, his conclusions at the close of the hearing on this bankruptcy, report that Judge Mixon also said he did not believe "most" of the testimony by Dan Lasater of Little Rock, Locke's employer and former business partner. The Judge said it appeared that Lasater and Bill McCord of Little Rock, Locke's son-in-law and former business partner in an automobile dealership, and another business employee conspired with Locke to hide his assets from creditors.

Now let me get back to my question. Mr. Lasater, did any of this come up with Governor Clinton?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Did the loan to Roger Clinton come up with Governor Clinton?

Mr. LASATER. No, sir.

Mr. CHERTOFF. By the way, it was, in fact, Governor Clinton who asked you to employ Roger Clinton originally.

Mr. LASATER. I believe it was either he or his mother, and it could have been either one. I don't dispute that it was Governor Clinton.

Mr. CHERTOFF. Well, I don't want to leave it ambiguous. I think we have your report of interview with the FBI that occurred in October 1986, in your package. You might want to take a look at it.

Mr. LASATER. What page?

Mr. CHERTOFF. Page 20, the last paragraph. This is their report of their interview with you where they say that—

Mr. FEINSTEIN. Mr. Chertoff, I don't believe that's in our package, I don't have any 20-page documents other than the deposition transcript.

[Document provided.]

Mr. FEINSTEIN. If he could have a moment to get to the page?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. The last paragraph:

Regarding Roger Clinton, Mr. Lasater advised he met Clinton through Mitchell Wood some time around 1981 or 1982 during the time Clinton played in a band in the Hot Springs area. Clinton was employed by him at one time in which Governor Bill Clinton requested Lasater to hire him.

Do you deny that's what you told the FBI in 1986?

Mr. LASATER. No. I would think this in 1986 would be closer to my—my memory would be better then than now.

Mr. CHERTOFF. Now getting back to this February 15th letter, in this letter, you summarize the various discussions that you had with Governor Clinton. To go through them one by one, you indicate: "To begin, let me suggest that Lasater & Company be advised of all financial proposals affecting the State of Arkansas." Do you see that one?

Mr. LASATER. I'm sorry. Would you repeat that?

Mr. CHERTOFF. The third paragraph: "To begin, let me suggest that Lasater & Company be advised of all financing proposals affecting the State of Arkansas." Do you see that one?

Mr. LASATER. No, I don't. What—

Mr. CHERTOFF. Third paragraph of your letter of February 15th.

Mr. LASATER. Is it the first paragraph?

Mr. CHERTOFF. The third.

Mr. LASATER. The third? OK. Yes, I do.

Mr. CHERTOFF. It says: "Secondly, we have discussed the appointment of Donnie Spears to the Arkansas Housing Board and I have confirmed our understanding regarding the appointment in my letter of January 23, 1985, and I want to again reaffirm our interest and desire in seeing Mr. Spears in this position." Do you remember that? That was discussed, wasn't it?

Mr. LASATER. At the meeting?

Mr. CHERTOFF. Yes.

Mr. LASATER. No. I don't recall it being discussed, no.

Mr. CHERTOFF. You remember making the recommendation?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. You confirmed the understanding regarding the appointment; right?

Mr. LASATER. Mr. Chertoff, I didn't write this letter.

Mr. CHERTOFF. You signed it?

Mr. LASATER. I signed it, yes.

Mr. CHERTOFF. The letter you signed and sent says, "I have confirmed our understanding regarding the appointment." Right?

Mr. LASATER. Right.

Mr. CHERTOFF. Now, hold your place there because I want to put up on the Elmo DKS 26466, which is in your package, 5/23. It's a memorandum to the Governor from Cathy. "Subject: Recommendations by Dan Lasater."

Mr. LASATER. OK. I have it.

Mr. CHERTOFF. This appears to be a kind of a tally to the Governor of how they are handling your recommendations. It's like a separate category—The Lasater Recommendations. It says, "Reappoint: George Wright, James Branigan." Do you know or did you know George Wright?

Mr. LASATER. No.

Mr. CHERTOFF. You didn't know George Wright?

Mr. LASATER. Well, I knew—I had met George Wright.

Mr. CHERTOFF. Did you recommend him?

Mr. LASATER. Yes, I did.

Mr. CHERTOFF. James Branigan, did you recommend him?

Mr. LASATER. I don't recall recommending—

The CHAIRMAN. Do you know or did you know a James Branigan?
Mr. LASATER. No. If he walked in this room, I wouldn't know him.

The CHAIRMAN. You didn't know him?

Mr. CHERTOFF. So you didn't recommend James Branigan?

Mr. LASATER. I'm not saying that I didn't recommend him.

The CHAIRMAN. Oh. Why did you recommend him?

Mr. LASATER. Well, probably because of my staff.

Mr. CHERTOFF. Someone asked you to do it as a favor and you recommended him?

Mr. FEINSTEIN. That's not what he said, Mr. Chertoff.

Mr. CHERTOFF. Your staff recommended him?

Mr. LASATER. That's what I would believe.

Mr. CHERTOFF. You knew Bill Mathis?

Mr. LASATER. Yes, I did.

Mr. CHERTOFF. What did you recommend him for?

Mr. LASATER. He was a very bright young man.

Mr. CHERTOFF. What position did you recommend him for?

Mr. LASATER. I don't recall.

Mr. CHERTOFF. Was it ADFA?

Mr. LASATER. It could have been.

Mr. CHERTOFF. What about Mort Hardwicke? Did you recommend him?

Mr. LASATER. I met Mort back here a little bit ago. I think I have met him, but I certainly don't know him well enough to recommend him.

Mr. CHERTOFF. Did you recommend him?

Mr. LASATER. I could possibly have, yes.

Mr. CHERTOFF. He was on the Board of ADFA; right? That's the Agency that gave you all the contracts; right?

Mr. LASATER. I'm not sure.

Mr. CHERTOFF. You are not sure you got contracts from ADFA?

Mr. LASATER. No. We got contracts from ADFA. I am not sure what Board he was on.

Mr. CHERTOFF. All right. We will establish that later. But I will represent to you he was on ADFA.

Mr. LASATER. OK.

Mr. CHERTOFF. Margaret Davenport-Jacks, do you know her?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. Did you recommend her?

Mr. LASATER. I did.

Mr. CHERTOFF. For what?

Mr. LASATER. One of the Board positions.

Mr. CHERTOFF. Was it ADFA?

Mr. LASATER. It was either ADFA or the Board that came before ADFA.

Mr. CHERTOFF. OK. But a Board that gives out bond contracts?

Mr. LASATER. That's correct.

Mr. CHERTOFF. Then Jim Louis Bell. Did you recommend him?

Mr. LASATER. Jim Tom Bell?

Mr. CHERTOFF. Jim Tom Bell. I'm sorry.

Mr. LASATER. Yes, I did.

Mr. CHERTOFF. Then Don Spears, who we see right here; right?

Mr. LASATER. Right.

Mr. CHERTOFF. Ed Willis, it says, "Actually Patsy recommended him." And I guess—of course, Patsy Thomasson was working for you in 1983?

Mr. LASATER. She was, yes.

Mr. CHERTOFF. And that is the same Patsy Thomasson who now works in the White House?

Mr. LASATER. It is.

Mr. CHERTOFF. Now this goes to the Governor. And we've established through Betsey Wright that when you see this little reverse checkmark, that is the Governor characteristic checkmark. He writes, "OK." So now is it still your position that you had less influence with the Governor and you were treated less fairly than anybody else in Arkansas on these kinds of issues?

Mr. LASATER. Repeat the question, please.

Mr. CHERTOFF. Is it still your position that you had less influence with the Governor and you were treated less fairly than anybody else in Arkansas?

Mr. LASATER. No. It is not my position that I was treated less fairly than everybody else in Arkansas.

Mr. CHERTOFF. Did you know that—

Mr. LASATER. It is my position that we had the second largest capitalized firm in the State of Arkansas and we didn't receive the pro rata share of the bond business that I thought we were entitled to because of the size.

Mr. CHERTOFF. You thought you were entitled to a third; right?

Mr. LASATER. I'm sorry?

Mr. CHERTOFF. You thought you were entitled to a third; right?

Mr. LASATER. A third?

Mr. CHERTOFF. Yes.

Mr. LASATER. Now where did you come with that number?

Mr. CHERTOFF. Well, I'm asking you. Did you think you were entitled to a third of the business?

Mr. LASATER. No.

Mr. CHERTOFF. Did you know that the Governor's office kept a separate category, kind of a running list, as to the Lasater recommendations?

Mr. LASATER. I did not.

Mr. CHERTOFF. Why would they do this?

Mr. LASATER. You will have to ask someone else other than I.

Mr. CHERTOFF. I mean, if your view is that you were kind of like, you did not really know the Governor, you are really kind of an outsider, and you are just kept at arms-length, why would they keep a separate list or a separate tally that the Governor personally reviews of your recommendations to various boards that award contracts that you have an interest in obtaining? Can you think of any reason?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Let's finish up with the letter of February 15th. You also requested an opportunity to be let in on an upcoming AHDA/FHA financing; is that right? That's at the bottom, fourth paragraph.

Mr. LASATER. I see that, yes.

Mr. CHERTOFF. But you also asked for other contracts and other business directly from the Governor. Do you remember, there was

something called the Mount Hood Pension Fund, a National Investor's Life Insurance, a National Investor's Pension Fund?

Mr. LASATER. What was the name of it?

Mr. CHERTOFF. Mount Hood Pension Fund, National Investor's Life Insurance, and National Investor's Pension Fund.

Mr. LASATER. I remember National Investor's, yes.

Mr. CHERTOFF. All right. In 1983, that was in liquidation?

Mr. LASATER. Yes.

Mr. CHERTOFF. You wanted an opportunity to participate in the sale of securities; right?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. You felt you had been cut out of that; right?

Mr. LASATER. I'm not sure at that point we had been cut out of it. I'm not sure.

Mr. CHERTOFF. Well, there was a woman named Linda Garner, who was the regulator responsible for handling this matter.

Mr. LASATER. Yes, appointed by Frank White, the Republican Governor, yes, sir.

Mr. CHERTOFF. Right. Then Bill Clinton became Governor and you wrote directly to the Governor to ask him to get you into position on this deal; right?

Mr. FEINSTEIN. Which deal are we now referring to?

Mr. CHERTOFF. This has to do with the dispersal of the National Investor's Securities.

Mr. FEINSTEIN. We are no longer on the February 15th letter?

Mr. CHERTOFF. Yes; right.

Mr. LASATER. Do we have a letter referring to that?

Mr. CHERTOFF. We do, indeed, December 14, 1983, in your package. We will put it up and I won't insist that we go through the entire letter. I just want to direct your attention to two elements of the letter. One is the last paragraph on the first page, and the next is the first paragraph on the second page.

Mr. LASATER. What paragraphs again?

Mr. CHERTOFF. The last paragraph on the first page.

Mr. LASATER. OK.

Mr. CHERTOFF. This is signed by you; right? Do you see your signature on the second page?

Mr. LASATER. It's signed by me, yes.

Mr. CHERTOFF. It says,

Faced with that reality, we hope that you will be able to take the initiative in strongly suggesting that Lasater & Company may be included with First Boston and Stephens, Inc. as a third co-manager. This would mean that a majority of the business would stay in Arkansas.

And then it continues to the next page.

With regard to the Board of the Arkansas Housing and Development Agency, it is our understanding that the chairmanship rotates annually. Based on this understanding, we would like to recommend our mutual friend, George Wright, for the chairmanship.

Does that refresh your memory about your recommendation of George Wright for initial appointment to the Agency and then for reappointment to the Agency?

Mr. LASATER. I think I testified that I recommended him.

Mr. CHERTOFF. Now, you wrote this letter and, of course, it was up to the regulator, Ms. Garner, to make the final decision. But did

you know that the Governor, in fact, intervened and put in a good word, shall we say, with Ms. Garner? Did you know that?

Mr. LASATER. No, I don't think I know that.

Mr. CHERTOFF. Well, at the top there in the Governor's writing, this is directed to somebody and it says, "Keep after Garner until you talk to her. We must give him follow up."

Mr. FEINSTEIN. That's the handwriting on the top of this?

Mr. CHERTOFF. Yes, that's right. That's the handwriting the Governor put on your letter.

Mr. LASATER. I don't know.

Mr. CHERTOFF. Did he tell you that the Governor was following up on your request, that he was responding by saying, "Keep after the regulator"?

Mr. LASATER. No. I was not told that.

Mr. CHERTOFF. You didn't know that?

Mr. LASATER. No.

Mr. CHERTOFF. You didn't pursue it with him?

Mr. LASATER. No.

Mr. CHERTOFF. You saw Governor Clinton on a number of occasions, didn't you, on a social basis?

Mr. LASATER. I saw him on a few occasions on a social basis, yes.

Mr. CHERTOFF. I know I am not going to have time to cover it all in this round, but I will begin at the beginning. After the 1980 election in which Mr. Clinton was turned out of office by Governor White, you had a sit-down with him; right? You met with him?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. And tell us about——

Mr. LASATER. I don't recall that meeting. But I have been told by people that I have confidence in that that meeting happened. But I still don't recall it.

Mr. CHERTOFF. Did he jog by your office?

Mr. LASATER. Jog by?

Mr. CHERTOFF. Yes. Was he running and he came by your office?

Mr. LASATER. I don't know.

Mr. CHERTOFF. Let me see if I can refresh your memory. Was Mr. Locke there, do you know——

Mr. LASATER. Yes, he was there.

Mr. CHERTOFF. —at this meeting?

Mr. LASATER. He's the one that refreshed my memory on it.

Mr. CHERTOFF. When did he refresh your memory on this?

Mr. LASATER. In the last few months.

Mr. CHERTOFF. So you all have been talking about this?

Mr. LASATER. Well, he's a friend of mine and I talk to him every week or so.

Mr. CHERTOFF. All right. In his deposition at page 28, line 7:

Question: This was in 1980 after Frank White took office?

Answer: A day or two after the election, like in November. I mean, I figure Bill would be somewhere vacationing; he was running. I was shocked he wanted to have this meeting but he wanted to know what he did wrong, in taking advice more than anything else and trying to gather support.

So that's how it took place. The reason I remember it so well—it was late in the afternoon, like 5:00, something like that, we got together after work—was that after about an hour, Bill kept—he was concerned he had to call Hillary and tell her he would be right on home; every 15 minutes he would say, "I will be right on home." That was about the most notable thing about the meeting.

Then, it goes on a couple of lines later.

Question: Do you recall how long the meeting took?

Answer: I would say a couple of hours, like from 5 to 7.

Now do you remember the meeting?

Mr. LASATER. No.

Mr. CHERTOFF. Do you know why he came to you and Mr. Locke?

Mr. LASATER. For political support.

Mr. CHERTOFF. But why? I mean, had you been big supporters of him back in the late 1970's?

Mr. LASATER. No, but he had been defeated and he was looking for additional support.

Mr. CHERTOFF. So you agreed to give him some support; right?

Mr. LASATER. I don't recall if we agreed at that time to support him or not.

Mr. CHERTOFF. Well, during that 2-hour period, what did you all talk about?

Mr. LASATER. I don't recall the meeting, as I've mentioned to you. But I don't dispute the meeting.

Mr. CHERTOFF. I think my time is up.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Lasater, you regard what you did with respect to the cocaine as wrong, don't you?

Mr. LASATER. I certainly do.

Senator SARBANES. In fact, you pled guilty to charges, didn't you, because of it?

Mr. LASATER. That's correct.

Senator SARBANES. And went to jail?

Mr. LASATER. That's correct.

Senator SARBANES. For how long?

Mr. LASATER. I was in actual prison for 6 months. I was in a halfway house for 4 months and under house arrest for 2 months.

Senator SARBANES. Mr. Chertoff went at you very hard about the distinction between giving away drugs and selling drugs. But you don't, for a moment, contend that giving away drugs isn't wrong, do you?

Mr. LASATER. No, I certainly do not. I know that it was wrong.

Senator SARBANES. OK. Now have you been drug free since then?

Mr. LASATER. Yes, sir, I have.

Senator SARBANES. I'm just curious, because it's a problem in our society. How were you able to do that? How were you able to break off the drug habit?

Mr. LASATER. The only way that I could do it was through the power of Jesus Christ and accepting him into my life.

Senator SARBANES. Was that a development that took place in prison or subsequent to prison?

Mr. LASATER. In prison.

Senator SARBANES. In prison? Through counseling by the prison authorities?

Mr. LASATER. No, sir. It was through a personal relationship.

Senator SARBANES. OK. I yield to Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Good morning, Mr. Lasater.

Mr. LASATER. Good morning.

Mr. KRAVITZ. Good morning, Mr. Drake.

Mr. DRAKE. Good morning.

Mr. KRAVITZ. Mr. Lasater, I know this is difficult for you this morning. There have been a lot of harsh allegations and tough questioning about some subjects that I'm sure you would prefer not to talk about. What I would like to do is ask you some questions about what our Resolution directly authorizes this Committee to investigate; and, that is the bond underwriting contracts between Lasater & Company and the Arkansas Development Finance Authority. And I would like to start by putting up on the screen a document marked DKS N 26102.

I don't know whether you have a copy of that in your packet. If not, I think one will be brought down to you. Actually, if one could be given to Mr. Drake as well.

[Document provided.]

My understanding is that this is a document that was prepared by the Arkansas Development Finance Authority during the 1992 Presidential Campaign summarizing the awards of bond underwriting contracts by the Arkansas Housing Development Authority and the Arkansas Development Finance Authority between 1978 and 1991.

Mr. Drake, let me start by asking you a question, just going back a little bit for a little history. Before 1983, is it correct that the State bond business was limited to a very small number of firms in Arkansas?

Mr. DRAKE. Yes, that's correct.

Mr. KRAVITZ. How small was that number?

Mr. DRAKE. Two.

Mr. KRAVITZ. Which were the two firms?

Mr. DRAKE. Stephens, Inc., which is where I was employed at the time; and T.J. Raney and Sons.

Mr. KRAVITZ. Who was the Governor of the State of Arkansas in 1981 and 1982?

Mr. DRAKE. Frank White.

Mr. KRAVITZ. Was he a Democrat or a Republican?

Mr. DRAKE. He was Republican.

Mr. KRAVITZ. Was Stephens, Inc., where you were employed at the time, known to be a supporter of Governor White?

Mr. DRAKE. Yes.

Mr. KRAVITZ. And Stephens did receive a large percentage of the State bond business during Governor White's term?

Mr. DRAKE. We received a lot and we tried to get as much more as we could.

Mr. KRAVITZ. When Governor Clinton came back into office in January 1983, did you become aware that he had a different policy than Governor White had had and specifically that the new policy would be to involve as many Arkansas bond firms as possible or, at least, as were qualified in the bond underwriting process so as to increase competition in the bond underwriting process and to bring in new ideas for the State in raising money?

Mr. DRAKE. Yes, that's the case.

Mr. KRAVITZ. Mr. Lasater, are you familiar with this new policy or change in policy that came in with Governor Clinton in 1983?

Mr. LASATER. I am.

Mr. KRAVITZ. By the way, before 1983, was Lasater & Company or was Collins, Locke & Lasater one of the very small number of firms who were allowed to share in the State bond business?

Mr. DRAKE. My recollection is that prior to 1983, while I was at Stephens, we did our best to keep everybody out of the deals that we could keep out of the deals, to keep most of the fees, of course, in our end of the arena. When Bill Clinton was re-elected, his policy was to make the pie larger instead of the various pieces larger. The idea was to, in a typical capitalistic approach, the more competition we have, the better ideas we have, the better the ideas, the better the performance, et cetera. And it worked.

Mr. KRAVITZ. Well, that was actually my next question. If I could direct your attention to this document that's up on the screen, how many firms are listed as recipients of State bond business from the Housing Development Authority in the 1981/82 period, Mr. Drake?

Mr. DRAKE. Three.

Mr. KRAVITZ. And those are?

Mr. DRAKE. T.J. Raney, Stephens, Inc., and George, which is short for George K. Baum, I'm reasonably sure.

Mr. KRAVITZ. In the 1983/84 period, how many firms are listed?

Mr. DRAKE. Eleven.

Mr. KRAVITZ. So that would be consistent with your memory of the implementation of Governor Clinton's new policy to involve a greater number of qualified Arkansas bond firms in State bond underwriting business?

Mr. DRAKE. That's correct.

Mr. KRAVITZ. Mr. Lasater, you testified earlier that, in your view, your company did not get any more than its fair share of the State's bond business once this broadening of opportunity began in 1983. And I wonder if you, now having had a chance to review this document that's up on the screen which shows exactly how much bond business your companies received in the 1983/84 time period, that refreshes your memory or actually corroborates your memory in any way?

Mr. LASATER. It just verifies it, yes.

Mr. KRAVITZ. What is it about this document that, in your view, verifies your testimony?

Mr. LASATER. Basically there were only three firms in 1981 and 1982; there were 11 in 1983 and 1984; and in 1985 to 1991, there has been 26.

Mr. KRAVITZ. According to this document, the two firms which each received the largest amount of business in the 1983/84 period were George Baum and T.J. Raney; is that correct?

Mr. LASATER. That's correct.

Mr. KRAVITZ. Each receiving \$327,500,000 worth of bonds to sell; is that correct?

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. And just so we are clear, that's not the amount of money that either of those firms earned; that was the value of the bonds that they were to sell?

Mr. LASATER. That's money they raised, yes.

Mr. DRAKE. May I interrupt and just make a statement about this? Those are deals that they participated in, not that they solely were responsible for selling. And there's a lot of—

Mr. KRAVITZ. I think that's an important point.

Mr. DRAKE. It's a very important point.

Mr. KRAVITZ. And then Stephens, Inc. is third on the list at \$251 million; is that correct?

Mr. LASATER. That's correct.

Mr. DRAKE. Lasater at the same level, just after Stephens, Inc., \$251 million?

Mr. LASATER. That's correct.

Mr. KRAVITZ. Then also further down the list, Collins, which presumably refers to Collins, Locke & Lasater, at \$76 million?

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. Now, my math shows me that the total for Lasater & Company, \$251 million, plus Collins, Locke & Lasater, \$76 million, actually equals exactly the same that George Baum and T.J. Raney—exactly the same value of the bond offerings that those two firms were involved in during that 2-year period, \$327 million; is that correct?

Mr. LASATER. In the 1983/84 period, there were two different firms. Initially, it was Collins, Locke & Lasater. That firm was separated and Collins went his way and I went my way. He had his own firm that participated and I had my firm that participated.

Mr. KRAVITZ. So in fact, we really shouldn't add those two figures together?

Mr. LASATER. Not in my opinion, no.

Mr. KRAVITZ. In your opinion, your firm received less business in the 1983/84 period than George Baum and T.J. Raney?

Mr. LASATER. Right. We did a small percentage of this business, too, because our customer base was mostly national. We did not have a big Arkansas customer base. So we did not sell a lot of these bonds.

Mr. KRAVITZ. Now just—

Senator SARBANES. Mr. Drake, I want to make sure I understand your point. Was your point that these figures are the total amount of the bond issues in which these various companies participated; is that correct?

Mr. DRAKE. That's correct, Senator.

Senator SARBANES. But the allocation to the particular company would be relevant in determining how much the company itself was getting; is that correct?

Mr. DRAKE. That's correct.

Senator SARBANES. So for instance, if Lasater participated with Stephens or with T.J., you would have to figure out how much each got; is that correct?

Mr. DRAKE. That's correct.

Senator SARBANES. Now it's my understanding, I think, from reading through some of the material that one of your complaints, Mr. Lasater, was you were getting lesser percentages, as a rule, than some of the others; is that correct?

Mr. LASATER. Yes, sir.

Senator SARBANES. OK.

Mr. KRAVITZ. And just to close the loop on this one document and the subject of a fair division among the various firms in Arkansas during the Clinton administrations, did Stephens, Inc. continue to

receive State bond business even after Governor Clinton got back into the Governor's office in 1983?

Mr. LASATER. He did.

Mr. KRAVITZ. Was that even though it was well known that the Stephens firm had supported Frank White for re-election in 1982?

Mr. LASATER. That's correct.

Mr. KRAVITZ. Indeed, Mr. Drake, do you know where Governor White went to work after he left the Governor's office in January of—

Mr. DRAKE. He went to work at Stephens, Inc. as head of the Municipal Finance Department.

Mr. KRAVITZ. And that was in January 1983?

Mr. DRAKE. It was in 1983. I can't tell you exactly when it was.

Mr. KRAVITZ. It was January 1983, when he left office?

Mr. DRAKE. Yes. He took his Administrative Assistant, Preston Bynum with him, as well. I might point out that Linda Garner, when she left the administration, went to work at Stephens, Inc.

Mr. KRAVITZ. Mr. Drake, Mr. Chertoff asked several questions earlier about various letters of recommendation that Mr. Lasater signed recommending that the Governor appoint various persons to the Housing Development Authority Board or the Arkansas Development Finance Authority Board later. I want to ask you: While you were at Stephens, Inc., did anyone in that firm ever make recommendations to anyone in the Governor's office as to persons that Stephens wished to have appointed to State Boards?

Mr. DRAKE. Routinely.

Mr. KRAVITZ. What Board or Boards did officials from Stephens, Inc. make recommendations relating to?

Mr. DRAKE. Boards that had vacancies.

Mr. KRAVITZ. Did it include the Housing Development Authority Board?

Mr. DRAKE. It most assuredly did.

Mr. KRAVITZ. And to your knowledge, did Stephens subsequently make recommendations to the Governor's office relating to appointments to the Arkansas Development Finance Authority Board?

Mr. DRAKE. Yes.

Mr. KRAVITZ. You said, "routinely." Is it your understanding that many of these firms, including Lasater and Stephens, routinely made recommendations to the Governor's office for appointments?

Mr. DRAKE. Yes. May I elaborate on that just for a moment?

Mr. KRAVITZ. Please.

Mr. DRAKE. At the three investment firms that I have professional experience, the firms are divided typically into corporate finance or public finance. And the professionals in the public finance department that were responsible for dealing with issuers of securities such as ADFA or AHDA at the time would routinely report to the president of the firm on appointments that were coming up or rotating officers of Boards and Commissions.

Our responsibility to the firm, as individuals who were assigned to those Boards and Commissions, was to make sure that our firm's interests were represented to the persons in the government that were making the appointments. It was very routine. That's what we did with Dan. That's what we did with Jack Stephens. And dur-

ing my short tenure at Morgan, Keegan, that's what we did with Allen Morgan.

Mr. KRAVITZ. So this Committee's record should be very clear that there was nothing unique about the fact that Mr. Lasater wrote such letters; is that correct?

Mr. DRAKE. I would like to point out that Mr. Lasater did not write these letters. I did.

Mr. KRAVITZ. Fair enough. There's nothing unique about the fact that he signed the letters and that they were sent over——

Mr. DRAKE. Well, he was the President, he owned the firm. And I would expect that the owner would sign those letters.

Mr. KRAVITZ. To your knowledge, was every single recommendation that the Lasater firm made to the Governor's office relating to a position on the Housing Development Authority or the ADFA Board followed by the Governor?

Mr. DRAKE. No.

Mr. KRAVITZ. Were some of those recommendations not followed?

Mr. DRAKE. Some of them were not followed.

Mr. KRAVITZ. If we could put on the Elmo DKS 26484, which is a memo from Bob Nash to Governor Clinton and Betsey Wright, dated May 2, 1985? Do you know if you have that?

Mr. FEINSTEIN. I don't believe we have that one.

Mr. KRAVITZ. Mr. Lasater, Mr. Chertoff asked you earlier about a recommendation that you made for the ADFA Board to Governor Clinton regarding a man named Jim Tom Bell.

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. Do you remember making that recommendation?

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. All right. I think we have the document down at the table now. Do you have a copy, Mr. Lasater?

Mr. LASATER. I can see the monitor.

Mr. KRAVITZ. OK. As we can see, we have had testimony about this document previously from other witnesses. Mr. Nash writes to Governor Clinton and Betsey Wright on May 2, 1985: "Dan Lasater gave me Tom's letter when I met with him on Wednesday for lunch. Bell is not my kind of person. Has always caused the Agency (AHDA) problems." To your understanding, Mr. Lasater, was Mr. Bell appointed to the ADFA Board?

Mr. LASATER. He was not.

Mr. KRAVITZ. Mr. Drake, do you know whether Mr. Bell was appointed to the ADFA Board?

Mr. DRAKE. He was not, and I did everything I could to make sure he wasn't.

Mr. KRAVITZ. Just so we are clear, I think this certainly is consistent with the testimony of Mr. Drake, that not all of the recommendations that Mr. Lasater made were followed by the Governor. I take it from your testimony, Mr. Drake, that there were other recommendations in addition to this recommendation relating to Mr. Bell that were not followed by the Governor's office. Is that correct?

Mr. DRAKE. That's correct.

Mr. KRAVITZ. So the notion that somehow because of political contributions or a friendship between Mr. Lasater and Governor Clinton, Mr. Lasater was permitted to, as it were, write the list of

Board members for the ADFA Board and for the Housing Development Authority Board. Is that consistent with the facts or with reality, Mr. Drake?

Mr. DRAKE. No.

Mr. KRAVITZ. Mr. Lasater.

Mr. LASATER. I'm sorry, I didn't understand the question.

Mr. KRAVITZ. Were you given free reign to name all of the members of the ADFA Board?

Mr. LASATER. Certainly not.

Mr. KRAVITZ. Mr. Chertoff asked you, Mr. Lasater, several questions about a meeting that you had with Governor Clinton and Betsey Wright at some point, presumably in early 1985. Let me ask you, Mr. Drake, in your experience, working both at Lasater & Company and at other firms, was it at all unusual for officials of bond underwriting companies to pitch their own business with State officials?

Mr. DRAKE. No. It was the norm, not the exception.

Mr. KRAVITZ. When you were at Stephens, Inc., did people from your company meet with members of the Governor's office to seek additional business?

Mr. DRAKE. Routinely.

Mr. KRAVITZ. Did the same thing happen when you were at Morgan, Keegan?

Mr. DRAKE. Routinely.

Mr. KRAVITZ. Mr. Lasater, as you recall, Mr. Chertoff asked you some questions about a letter from you to Governor Clinton, dated February 15, 1985.

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. That was DKSJ 27573 and 74, in which you suggested to Governor Clinton, or at least the letter that you signed suggested to Governor Clinton, a number of things, including that you would like advance notice of upcoming bond offerings or upcoming development matters in the State, and also if possible, you would like to have regular meetings with the Governor. Let me just ask you: Did you ever, after writing this letter, have regular meetings with Governor Clinton?

Mr. LASATER. No, sir.

Mr. KRAVITZ. Did you start receiving heads-up regarding development issues that were about to come up in the State of Arkansas as a result of this letter?

Mr. LASATER. No, sir.

Mr. KRAVITZ. Who wrote the letter; do you know?

Mr. LASATER. I think Michael wrote it. I'm not sure.

Mr. KRAVITZ. Is that correct, Mr. Drake?

Mr. LASATER. Or, it could have been Rick Knox.

Mr. DRAKE. Well, I wrote the letter. In my deposition, I stated that I didn't. I now recall that I did. It was a letter that was a compilation of recommendations from staff that I then took to Dan for signature.

Mr. KRAVITZ. And as far as you are aware, Mr. Drake, the recommendations or the suggestions to the Governor's office were not followed?

Mr. DRAKE. They weren't followed as long as I was employed by Dan. I would have been very surprised if they had been followed.

Mr. KRAVITZ. OK. And I should say that another document in the Committee's possession, DKS~~N~~ 27572, again a document that we have received testimony on, indicates that Betsey Wright, upon receipt of the letter, wrote, "outrageous" on it. Then Governor Clinton wrote, "Not the time to go this far." To paraphrase, Ms. Wright's testimony about Mr. Clinton's note, she said it was his polite manner of saying no, we were not going to be giving heads-up to one firm and we were not going to be having regular meetings with that firm.

Mr. Lasater, I wanted to ask you a few more questions about the meeting that you had with Governor Clinton and Betsey Wright at the Governor's—

Mr. LASATER. Excuse me. But that was just Governor Clinton. I don't recall Betsey Wright being there.

Mr. KRAVITZ. I apologize. That was the meeting at the Governor's office?

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. What was Governor Clinton's response when you suggested to him that you thought your company should receive a larger share of the State's bond business?

Mr. LASATER. Cordial, non-committal.

Mr. KRAVITZ. After that meeting, did you receive any increase? Did your company receive any increase in its share of the State's bond business?

Mr. LASATER. No, sir.

Mr. KRAVITZ. Mr. Chertoff asked you several questions about what he alleged were failures on your part to disclose certain information to Governor Clinton during that meeting. And I want to show you another document that Mr. Chertoff did not show you. I may be wrong about that, he may have. I just wanted to show you this document, because it may assist the Committee in clearing up any misperceptions that were created by the earlier questioning. The document I'm referring to is DKS~~N~~ 26479, which is a January 23, 1985 letter, signed by you to the Honorable Bill Clinton, Governor. Do you have that in front of you, sir?

Mr. LASATER. I do.

Mr. KRAVITZ. The first line of this letter says: "Since our January 4, 1985 meeting," and then it goes on. Now, you've already testified that you only remember one such meeting with Governor Clinton. Does this refresh your memory as to when this meeting occurred?

Mr. LASATER. Yes, that had to be the meeting.

Mr. KRAVITZ. So after seeing this letter, your memory is that the one meeting you were testifying about with Governor Clinton most likely occurred on January 4, 1985?

Mr. LASATER. Yes, sir.

Mr. KRAVITZ. Mr. Chertoff asked you whether during your meeting with Governor Clinton you informed the Governor that you had made a loan to the Governor's brother, Roger. Do you remember those questions?

Mr. LASATER. Yes, I do.

Mr. KRAVITZ. Now, correct me if I'm wrong, but my understanding is that the loan that you made to Roger Clinton was in February 1985; is that correct?

Mr. LASATER. I don't recall.

Mr. KRAVITZ. Do you remember whether it was before or after January 4, 1985?

Mr. LASATER. No, sir, I don't.

Mr. KRAVITZ. Mr. Chertoff also asked you whether you, in your meeting with Governor Clinton, told the Governor about the statements of the Federal Bankruptcy Court Judge relating to your testimony. The article that Mr. Chertoff showed you was undated, as far as we know, but it says January 1985. And 1985, it certainly seems like it's more likely than not that it was after January 4, 1985, that the Bankruptcy Court Judge said whatever he said. So I think that may put it into context as to why you may not have told Governor Clinton about that. Is that fair to say?

Mr. LASATER. That's fair to say.

Mr. KRAVITZ. OK, Mr. Cole.

Mr. COLE. Mr. Drake, if I could ask you to return for a moment to the February 15, 1985 letter that Mr. Kravitz asked you about previously, perhaps we could put that up on the display.

There has been some attention during these hearings focused on the third paragraph of that letter where it says, "To begin, let me suggest that Lasater & Company be advised of all financing proposals affecting the State of Arkansas." And I must confess, to me, that does seem to be something of an unusual request. Can you tell me what prompted you to include that request in your letter? I understand you drafted this letter for Mr. Lasater's signature; is that correct?

Mr. DRAKE. That's correct.

Mr. COLE. Can you enlighten the Committee as to why you might have included this request in the letter?

Mr. DRAKE. Sure. Late 1984 and 1985 was the period of time that Governor Clinton introduced his economic development initiative in the Arkansas Legislature, effectively converting the Arkansas Housing Development Agency which was a very narrow—had very narrow authority to issue securities into the Arkansas Development Finance Authority, which had broad issuance authority.

Mr. COLE. If I could interrupt you on that point for one moment, the distinction being important because the Housing Authority could issue bonds to finance only certain kinds of activities. And I take it the Governor's legislative program was for a broader range of economic development in the State, so you needed broader—

Mr. DRAKE. That's right.

Mr. COLE. —legislative authority?

Mr. DRAKE. That's right. Just to elaborate on that point a little bit, AHDA was permitted to issue two types of securities—multi-family housing securities or single-family housing securities.

In 1984, the Governor and Bob Nash, specifically, and Betsey Wright, and others in the administration and many outside of the administration, including a very bright lawyer named Jack Williams at Williams & Anderson in Little Rock, began a national search to determine the best possible legislation that could be introduced in the Arkansas Legislature that would enable the State to compete in: (a) soliciting plant relocation into the State of Arkansas; (b) assist in financing plant, property, equipment, et cetera; and, (c) basically to launch the State into the 1990's and into the next century.

Mr. COLE. So this was an effort to bring industry into the State and——

Mr. DRAKE. Among others.

Mr. COLE. —spur economic development?

Mr. DRAKE. And we felt we had been shut out of that process. We weren't solicited.

Mr. COLE. "We," being Lasater & Company?

Mr. DRAKE. Our firm, yes.

Mr. COLE. You felt you had not been consulted as much?

Mr. DRAKE. That was the conclusion we reached.

Mr. COLE. Was that a problem? Did you feel that put you at a disadvantage in comparison to the firms that had participated more directly in that procedure?

Mr. DRAKE. Yes, it did.

Mr. COLE. And that's what prompted you to include the language in this letter?

Mr. DRAKE. That's correct.

Mr. COLE. So if I understand your testimony, what you intended with this letter was not to ask that your firm be given any kind of special treatment but rather that your firm be given the same consideration that other investment advisers and finance firms were in the State.

Mr. DRAKE. There were two purposes for the letter: No. 1, to request access; and, No. 2, to suggest that the other firms that were provided with access not be permitted to have access. I mean, it's one thing to get the business. It's quite another to knock somebody else out of getting the business.

Mr. COLE. I understand. Well, I would like to cover some other matters that occurred in 1985 with you, but I see the yellow light is on. So I certainly will defer to the Majority and will come back.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I apologize that I was not able to be here earlier because of other committee meetings simultaneously. So if I go over some ground that has already been covered, I apologize for that.

Mr. Lasater, I have read your statement with interest. I was here yesterday when you were discussed. I trust you were paying some attention.

Mr. LASATER. No, I was traveling yesterday.

Senator BENNETT. You were traveling yesterday? I'm sure it will come as no surprise to you that a good part of the conversation about you yesterday centered around your unfortunate experience with cocaine. And you talk about that very frankly in your opening statement.

Mr. LASATER. Yes, sir.

Senator BENNETT. It is unfortunate in terms of your personal circumstances that you and your family can't put this behind you. I've had the personal experience of being tied to people who have public office and having the spotlight that is on them then to a degree that I did not find comfortable shift to me. It's the way we live in a free press kind of society and there is little or nothing we can do about it.

But I would like to just get a better handle on understanding what went on. I accept at full face value your statement that you've put this behind you and this is no longer a problem in your life. And I salute you and congratulate you for that.

Mr. LASATER. Thank you, Senator.

Senator BENNETT. The comments that came out yesterday indicated that while you did not sell cocaine for money that you nonetheless used it as a tool in your business activities and in your personal pursuits, so that it became almost as if it were a form of currency for you and you could use cocaine to get people to do things that you wanted them to do, you would reward people for things that they had done for you by giving them cocaine. It became, as I say, a form of currency. Is that a fair description of the way it was used?

Mr. LASATER. No, sir.

Senator BENNETT. Would you want to give me your version, then, to try to make the record clear, because that's the clear impression we got yesterday?

Mr. LASATER. I certainly do not recall ever using cocaine as a reward for anyone in our company that had achievements.

Senator BENNETT. So the distribution to your employees was entirely for recreational uses and not in any attempt to try to manipulate their behavior?

Mr. LASATER. That's correct.

Senator BENNETT. Mr. Drake, I have read your memo. Would you agree with that characterization?

Mr. DRAKE. Well, Senator, I am not going to dispute Dan's motives. As someone who had an abuse problem at the time, it was my impression at the time that that's a good way of explaining my abuse problem is to blame it on someone else.

Senator BENNETT. I would refer specifically to a sentence in your "Memo to File, dated October 14, 1986." I'm quoting and correct me if I'm not quoting accurately at any point: "It became obvious to him," that is, to you, "that Dan Lasater was using cocaine as a tool to manipulate his peers and force them to serve as a buffer between the authorities and his cocaine abuse."

Mr. DRAKE. Well, I would point out—

Senator BENNETT. Do you want to alter that now? That is the statement.

Mr. DRAKE. That's not my statement, Senator. That's the statement of a State Police investigator. That's his impression of what I told him.

Senator BENNETT. I see. Do you want to elaborate on that?

Mr. DRAKE. I would say, as I said earlier, that I think this statement was—the impression that this man had was that I was explaining away my substance abuse by blaming it on Dan. It wasn't Dan's responsibility for what I was doing. It was my own. And at the time, there was a lot of denial. I think that anybody who has had an abuse problem would admit that that's part of the recovery process. So you would have to ask Doc DeLaughter whether or not this was an accurate statement. He wrote it. I didn't write it.

Senator BENNETT. He lists a number of people, quoting you, that were used in the manner described in the first sentence, and then this sentence: "Lasater also considered these people loyal to him

because he used cocaine to control them for his benefit. Drake also noticed Dan Lasater using George Locke, Clarence Stromm, Jay Dehaven, and Chuck Berry to carry his cocaine for him." Do you want to give us an explanation of those sentences as well?

Mr. DRAKE. Well, I think that they speak for themselves. I mean, what would you like me to elaborate on?

Senator BENNETT. They paint a somewhat different picture than the picture you gave us in response to the first question I quoted. And I wonder if you want to try to change that picture as well; or, do you think in this case the picture—

Mr. DRAKE. I would say that was my impression.

Senator BENNETT. —they paint is accurate?

Mr. DRAKE. I would say that was my impression at the time.

Senator BENNETT. I see. OK. Well, I won't pursue this further. But this was one of the major concerns we talked about yesterday with respect to the reputation of the firm as it was competing for the business. It was brought out that there were people who voted against giving the firm the radio contract. And the reason, we were told, why they voted against the firm was because they were concerned about the reputation of E.F. Hutton, E.F. Hutton having had some very negative national publicity because of a check kiting scheme in which a number of E.F. Hutton executives lost their jobs. I think some of them went to prison. I am not sure on that latter case. I know there was significant penalty connected with the E.F. Hutton activity.

The question was raised: You were concerned about E.F. Hutton's reputation, did anybody discuss Mr. Lasater's reputation? The answer, as I recall it, Mr. Chairman, was yes, there was a discussion in open meeting of the degree of cocaine use that went on in the Lasater firm; and that's why I'm pursuing it.

Frankly, I was a little surprised that people would say, "We are not going to give this contract because we don't want to be tainted with a connection to E.F. Hutton;" but nobody was particularly interested about being tainted with a connection to Mr. Lasater and apparently fairly widespread recognition of the cocaine circumstance. That's why I'm trying to find out how widespread was the understanding in Arkansas of the fact that in the Lasater firm cocaine use was the common practice throughout the firm.

Mr. Drake, you looked as if you wanted to respond to that?

Mr. DRAKE. I would like to—

Senator SARBANES. Senator Bennett, before he responds, in fairness to E.F. Hutton, since you just made the statement, it is my understanding that no individuals were charged in the Hutton case and that nobody went to jail.

Senator BENNETT. I appreciate the correction.

Senator SARBANES. I mean, it was just out there on the record.

Senator BENNETT. Yes.

Senator SARBANES. I think it's important.

Senator BENNETT. It was my memory to the contrary, but I am glad to be corrected.

Mr. DRAKE. I think, Senator, the principal difference between the situation at Lasater and the situation with Hutton is that Hutton's indictments were public. Hutton had admitted to check kiting. They had been or were in the process of being sanctioned by the

SEC and/or the NASD at the time. To my knowledge, there were no indictments or public accusations either in the media or by law enforcement officials when we solicited the business in the Arkansas State Police Commission.

Senator BENNETT. It is my memory from yesterday's testimony that it was discussed in open meeting.

Mr. DRAKE. I wasn't present at that discussion.

Senator BENNETT. Well, I can understand that. Do you have any knowledge, Mr. Lasater, of whether, indeed, it was discussed in an open meeting of the Commission?

Mr. LASATER. No, I would have no knowledge of that.

Senator BENNETT. Mr. Lasater, you've made a great point in your opening statement about your relationship with Bill Clinton and the fact that the relationship was correct in all aspects.

You make the point with which I fully agree, that certainly no Member of this Committee can complain if a citizen decides to give him or her a campaign contribution. To a degree that none of us particularly like, we are almost in the business of soliciting those on a fairly regular basis. Can you give me an indication of how large your campaign contributions to Bill Clinton were?

Mr. LASATER. The best I recall, in the 1984 campaign, I contributed—me and my family contributed \$8,000.

Senator BENNETT. Eight thousand dollars and was this a check, cash, money order?

Mr. LASATER. Checks.

Senator BENNETT. Checks? Did you ever give him any cash; do you know?

Mr. LASATER. No, I did not ever give him any cash.

Senator BENNETT. I see. What are the disclosure laws in Arkansas? Are you required to disclose these amounts?

Mr. LASATER. I think so. Whatever the national laws are, I think is what the Arkansas laws are.

Senator BENNETT. Well, this is a Gubernatorial race, not a national race.

Mr. LASATER. OK. I don't know. I don't know.

Senator BENNETT. Is there any restriction on corporate funds in a Gubernatorial race in Arkansas; do you know?

Mr. LASATER. I don't know.

Senator BENNETT. Were these corporate funds or private funds?

Mr. LASATER. They were private funds, the \$8,000. Besides that, one of my companies, and it could have been Lasater & Company, purchased some—it was a fundraiser dinner and I think we purchased some tickets to that.

Senator BENNETT. I see. Thank you. My time has expired.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I just want to try to clarify one thing that Senator Bennett made reference to. He said, when he was questioning Mr. Drake, this was discussed in an open meeting. Is that the Hutton problem that you are making reference to?

Senator BENNETT. My memory of the testimony yesterday, when it was raised by Counsel for the Minority, that there had been votes against the granting of the contract to the Lasater, Hutton, Raney group, and that the reason the votes against were cast was the Hutton concern.

Senator SARBANES. Right.

Senator BENNETT. Then the question, was there any discussion of Lasater? The answer, yes, there was some discussion of Lasater. At one point, and I've forgotten which witness said he discussed it with the Chairman of the Commission and that it was discussed in a meeting of the Commission. Now, I guess I'm reaching when I say an open meeting, because I assume that all the meetings were open. But that was my memory of the testimony yesterday.

I'm sorry, Mr. Drake?

Mr. DRAKE. Well, I have the State Police Commission Minutes here from the—that are in the public domain and the Minutes reflect that there were two votes. Two Commissioners voted against our proposal—Gene Raff and a gentleman named Nashburne.

I personally talked to Gene, lobbied him to vote for us. And he told me he couldn't, because he was married to Jack Stephens' administrative assistant's sister and he would be run out of Arkansas if he voted for us.

I can't tell you why Mr. Nashburne voted against us. I was at this meeting. There was no discussion of drug use. There was a discussion of——

The CHAIRMAN. Mr. Drake, we have a memorandum where the question was raised about the Lasater firm and street talk being used. Certainly, you know, I find it interesting it was street talk about Lasater low bidding, et cetera.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, could we see that memo? Was there a memo?

The CHAIRMAN. Yes, there was a memo about the street talk and the Lasater firm low bidding. I find it interesting that you seem to know what was or wasn't discussed with some of these members.

Now, obviously, if you had a discussion with a particular member, that's very relevant. But we had testimony in which the head of the police was asked to do a background check and to look into the question of whether there were any problems with Lasater. And we can read into the record explicitly what was said with respect to that.

There were questions about the newspaper accounts as it related to the question of drugs. But you know, obviously there was some concern and the Commissioner or the head of the police looked into the matter. He said he didn't come up with anything. But he was asked to look into it.

I think that's what the Senator was referring to.

Senator DODD. Mr. Chairman, I just—because the implication here is that the memo—and somehow I got——

The CHAIRMAN. No. The memo was——

Senator DODD. There was no reference.

The CHAIRMAN. The memo was as it reflected to street talk that Dan Lasater was low balling the bid.

Senator DODD. Well, that's not drugs.

The CHAIRMAN. I understand. There was other testimony yesterday, Senator, and there was a question raised to the head of the State Police to check to see if there was any problem with——

Senator DODD. Yes, and there the answer was no. The answer from the State Police.

The CHAIRMAN. Well, it shows you there wasn't a very good investigation.

[Laughter.]

Senator DODD. That's not the issue.

The CHAIRMAN. Well, I mean—

Senator DODD. The issue is whether or not anyone knew. I mean, here you go and you ask the State Police, is there a problem. Someone might have said it shouldn't have gone that far. And the answer back is no.

The CHAIRMAN. Senator, you know, there was a Federal trial. It was talked about in the press. The drug use was talked about, et cetera. I find it rather interesting that when they have a report and the Chief says, "Oh, no, there was nothing," but yet a year later we find out it was followed by an indictment—

Senator DODD. Well, Mr. Chairman, in fairness, they went and asked the question of the State Police. The State Police says no. A year later, something else happens. In fairness to the people, you cannot then assert that they somehow knew. They went out of their way. They asked the question. The answer was no. And in this memo here, there is no reference. Street talk about low balling a bid is not about drugs.

The CHAIRMAN. Let me tell you something. In January or February of that particular year, it's the State's second largest newspaper. There is public testimony given with respect to Dan Lasater, an Arkansas native, who owns a race horse farm and who once gave young Clinton \$8,000 to help settle drug debts, also used cocaine.

Senator DODD. All right. Mr. Chairman, you seize the story—

The CHAIRMAN. No, let me tell you something. It was a heck of a great police investigation—

Senator DODD. Well, wait a minute.

The CHAIRMAN. —that must have gone on.

Senator DODD. Mr. Chairman, in fairness, the story appears. The Governor then contacts the State Police and says, "Is there a problem?" The State Police say, "No." Now, if anyone of us sitting at this table here went to that extent, no one would then question whether or not you hadn't gone and asked the question. I mean, that's in fairness, just simple fairness.

The story appears in the press. How many stories appear about us in the press? Huh? How many stories have we had written about us? And then how many people then went to the State Police and asked the question, "Would you look into this and give me an answer?" I mean—

The CHAIRMAN. I don't see why the Senator is so upset. The record speaks for itself.

Senator DODD. Well, of course, it does.

The CHAIRMAN. The question, as it relates to whether there was a question of drugs and the propriety of awarding the contract was raised. Was it raised in exact context as it relates to official meetings? It was raised to the point that apparently the Governor or someone on behalf of the Governor contacted the head of the police to check this out.

Now one of the interesting things is that when we asked the Commissioner of Police or the former head of the State Police, he didn't even recall this trial, which was publicly commented on, as it related to the allegations of drug use, which were testified to. So obviously there were people and there were news accounts about this, later substantiated. I don't see the big fuss. I mean, the Senator raised the question and I don't understand what the point is.

Senator DODD. The point is that there is an allegation. There is an implication.

The CHAIRMAN. What's the implication?

Senator DODD. That the Governor or others were aware that there was drug use and that there is testimony——

The CHAIRMAN. Well, if the Governor didn't read that his brother had gotten \$8,000 from Dan Lasater and wasn't aware of that when that appeared in one of the State's largest newspapers, I would eat my hat. Now that's nonsense, let's not kid ourselves.

Senator SARBANES. Mr. Chairman, I think we ought to be very careful——

Senator DODD. Very, very careful.

Senator SARBANES. —about what actions ought to be taken on the basis——

The CHAIRMAN. Well, who said what actions should be taken?

Senator SARBANES. —of allegations——

The CHAIRMAN. I didn't say that any action should be taken. I'm just suggesting that——

Senator SARBANES. Well, on the basis of allegations about one's brother.

The CHAIRMAN. Wait. It is absolutely not conceivable that the administration was not aware.

Senator DODD. Mr. Chairman, the Governor asked the State Police——

The CHAIRMAN. Let me read the deposition of Thomas L. Goodwin, who was the head of the State Police at that time. He says, "Governor Clinton, myself, and a lot of other people knew that Dan Lasater was a user of cocaine." That's on page 31 of his testimony that he has given to this Committee in deposition on February 26, 1996.

Senator DODD. Mr. Chairman——

The CHAIRMAN. Now, the whole question is whether or not——

Senator DODD. Mr. Chairman, if you talk about hearsay, here's a witness saying, "I knew and everybody else knew." The Governor asked the State Police whether or not there was an investigation.

The CHAIRMAN. No, here's the question.

Senator DODD. That was an appropriate and proper step for him to take.

The CHAIRMAN. I'm not suggesting it wasn't.

Senator DODD. The answer comes back no.

The CHAIRMAN. Well, here on page 31:

Question: In any of the conversations that you had with Governor Clinton with regard to the financing of the systems, did he ever mention that Lasater & Company had an interest in doing the underwriting for the system?

Answer: Yes.

I'm reading from page 31, 2/26/96, the deposition of Thomas L. Goodwin, who was the State Police Commissioner at this time. Is that right, Mr. Drake?

Mr. DRAKE. Yes, sir.

The CHAIRMAN. You had talked to him and he said, "When did he mention that? I remember at least one of those meetings was after the legislation had passed." That's the legislation with respect to the bond. Now, you know, I didn't raise this——

Senator DODD. Well, Mr. Chairman——

The CHAIRMAN. I didn't raise this. Now understand——

Senator DODD. Isn't page 57, though, the same testimony? Look at page 57, the same testimony.

The CHAIRMAN. Well, let me finish. "Governor Clinton, myself, and a lot of other people knew that Dan Lasater was a user of cocaine. The conversation with Governor Clinton to that effect was we sure don't want any firm involved in financing this that is about to be arrested for selling cocaine. I think he directed the statement to me in particular."

So I will read any other statement. But are we now going to say that no one knew that Mr. Lasater was involved in at least the use of drugs?

Senator DODD. Mr. Chairman, in fairness here. Obviously, we are trying—this is a very successful——

The CHAIRMAN. I did not bring this up, Senator. I mean, you opened the door by suggesting that somehow when Senator Bennett raised the question about——

Senator DODD. No.

The CHAIRMAN. —drug use that it was why and where and how did it appear. Here is the Police Commissioner——

Senator DODD. Mr. Chairman, can I be heard? I mean, the clock is running here.

The CHAIRMAN. Oh, we will give you all the time you want.

Senator DODD. The implication is clear, look, this is a very titillating subject. But in fairness to people here, if you look on pages 31 and 35 of that same deposition of Mr. Goodwin:

Question: Those are concerns he expressed at the time?

Answer: Yes.

Question: How was the Lasater cocaine issue first brought up? In what context?

Answer: If I'm not mistaken, the Governor brought it up. I don't think I'm wrong there. I believe he brought it up.

It's the Governor and the rumors around, bring it up, saying, "Is there an investigation of Lasater?" The answer is no, there is not.

Now rumors fly all over the place all the time. And the suggestion somehow that on the basis of rumors that everyone should have been aware and reacted accordingly. The Governor does the appropriate and proper thing. He asks the proper authorities, "Is there an investigation?" Not is there a rumor, but is there an investigation. That is not something everybody does in public life. He did it. And I think that's worth noting here, Mr. Chairman, if you look back on its history.

The CHAIRMAN. You know what, Senator Dodd? If you had indicated that it is important to recognize that the Governor raised this, you wouldn't have heard a peep from me or from anybody else. But to suggest that there was no reason to even think about this——

Senator DODD. He did think about that.

The CHAIRMAN. So fine. You put it in a proper context. But the fact of the matter was that the State Police Commissioner says replete, from page 31 right through the end, that it was rumored, that it was talked about, that it was rather well known, if you read the end, he says it was well known in the Little Rock area.

Senator DODD. It's rumors.

The CHAIRMAN. Or at least it was pretty well talked about.

Senator DODD. Mr. Chairman, you and I don't react on rumors.

The CHAIRMAN. Look, I understand what you are saying. I think you have made a lot more of this—and I don't understand why—than Senator Bennett ever even intended.

Senator BENNETT. I was unaware I was going to trigger this kind of an exchange.

The CHAIRMAN. I mean, really, I don't understand this.

Senator BENNETT. If I may have the time to say, Mr. Chairman, yesterday we were told that the negative votes against this proposal came solely because of concern of E.F. Hutton and the reputation of E.F. Hutton. It seems to me a logical question, given this circumstance, was then asked: "Was there any concern about the reputation of Mr. Lasater?" The answer I got was that they were aware of the reputation Mr. Lasater had for drug use and drug use in his firm but, no, that didn't play any role in the decision to give the contract to Lasater. And it didn't play any role in the decision of the two people who voted against giving the contract to Mr. Lasater. They focused entirely on the reputation of E.F. Hutton.

And now, you've given us a different view, Mr. Drake, which does not surprise me. You've said the vote against giving the contract to Mr. Lasater was based on something entirely different and that you were close to the man that cast the vote and he cast the vote because of his relationship with the brother-in-law or whatever.

That happens all the time, that one person can say the vote turned on this issue and another person will say the vote turned on this issue. That happens in our body all the time. Why did Senator So and So vote against this? Well, I'm close to him. I think he did it because of this reason and somebody else says, "No, I think he did it for that reason." This does not concern me.

I was just interested in finding out whether or not concern about drug use in the Lasater firm had any impact on the decision to vote against the contract. So now we have had the exchange and I will step back and watch the sparks fly a little more.

The CHAIRMAN. I'm going to ask that another 5 minutes be put on the clock so that you can—

Senator SARBANES. I yield 5 minutes to Mr. Cole.

Mr. COLE. Thank you, Senator.

Mr. Drake, since we are on the subject of this police radio financing that took place in 1985, I take it that you had significant involvement in those events.

Mr. DRAKE. Yes, sir, I did.

Mr. COLE. You were the head of the public finance group at Lasater & Company at that time?

Mr. DRAKE. Yes, sir, I was.

Mr. COLE. Can you begin by telling us how your firm first became involved in that matter?

Mr. DRAKE. Yes, sir, I will. It is my recollection that in mid-1984—and it may have been in the spring or in the summer—I was approached by two gentlemen from T.J. Raney & Sons, Bob Snyder, who is Managing Director of the Public Finance Department, and a colleague of his, Paul Young, who is also employed at Raney, seeking our assistance in pursuing the creation of legislation that would enable a State Police radio system to be acquired by the Arkansas State Police. One, to structuring a transaction that would enable us to underwrite the securities; and, two, to participate in a transaction that involved E.F. Hutton as the national distributor of the securities.

It was my understanding at the time that Raney would “run the books,” which means they would manage the transaction from Arkansas; E.F. Hutton would be responsible for the leasing entity. We decided to use a lease approach because of a constitutional prohibition in Arkansas of issuing securities by a State Agency without a referendum. And E.F. Hutton at the time was the preeminent securities dealer in the United States in public finance.

Mr. COLE. If I could interrupt you just for a moment on the point you previously made about the use of the lease arrangement.

Mr. DRAKE. Yes.

Mr. COLE. If I'm understanding you correctly, there would have been a problem with issuing the bonds for an outright purchase without a referendum vote. Is that what you are saying?

Mr. DRAKE. Bonds in Arkansas were constitutionally prohibited from being issued at that time by an Agency that did not have direct authorization to issue bonds without a vote of the people.

Mr. COLE. The State Police Commission did not have that authority at that time?

Mr. DRAKE. They did not.

Mr. COLE. So there was a problem—and we had a great deal of testimony about this yesterday—of a critical need for a new police radio system. A State Trooper had been killed, we were told, and there was a need to finance that. And your group developed a solution that would permit that to be done under the laws that existed at that time?

Mr. DRAKE. Yes. At the time, there had been much discussion. Keep in mind, the Legislature was not in session at that time in 1984. And there was much discussion about either a pay-as-you-go, which is typically a financing or an outright purchase, which would be an appropriation. A particular problem of municipal finance is that because of the biannual appropriation, there is no guarantee that one Legislature can bind a future Legislature to a contract.

Mr. COLE. And presumably, the supplier of the equipment, if they put in \$30 million worth of equipment, they would want some assurance that they would be paid in the future if it was to be on a pay-as-you-go basis?

Mr. DRAKE. Right.

Mr. COLE. So that was a problem you—the State needed to solve?

Mr. DRAKE. Yes. The other approach would be an outright appropriation. The State didn't have the funds.

Mr. COLE. When you say an outright appropriation, you mean the State Legislature would have had to have taken whatever funds were needed, \$30 million, taken that out of the State's gen-

eral revenues so that money that otherwise would have gone to schools or other State highway construction would have been used that year to purchase the State Police radio facilities?

Mr. DRAKE. Someone would have to give up something in order for the State Police to be able to acquire this with cash, yes.

Mr. COLE. Did your group retain a law firm at that time to help you in preparing the legislation?

Mr. DRAKE. Yes.

Mr. COLE. A lot of attention was focused on that yesterday. And I have very little time left, but was that an unusual thing in your experience at the firms that you had been employed, to retain a law firm to draft legislation?

Mr. DRAKE. No. Heavens, no. I mean, this is very typical in all levels of my experience in government—at local, county, State. No experience here, but very typical for private interests to hire firms to advance legislation.

Mr. COLE. Was this a secret? Was there any effort made to cover this up or hide it from the State officials that the law firm was working with your group?

Mr. DRAKE. None at all.

Mr. COLE. So is it your recollection—and I realize this is 11 years ago—that people understood that the Mitchell, Williams firm was working with the Hutton/Raney/Lasater group?

Mr. DRAKE. I don't know if it was broadly known, but there was no effort to hide it. So you can draw your own conclusions from that.

Mr. COLE. We will come back. My time has expired.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Drake, I want to put up the chart that the Democratic side had put up about half an hour ago, DKS 26102, which is the listing of the bond issues in which your firm and other firms were involved in at various times, because I actually think it's very interesting. And this was a campaign document that was put out, Mr. Drake, or a document that was put out during the campaign?

Mr. DRAKE. I have it.

Mr. CHERTOFF. All right.

Mr. DRAKE. Excuse me?

Mr. CHERTOFF. This is a document that you were just told by the other side was—

Mr. DRAKE. Yes.

Mr. CHERTOFF. —put out during the campaign.

Mr. DRAKE. That's what I was told.

Mr. CHERTOFF. Now what we see here is that in 1983 and 1984, there was an expansion of the number of firms that are doing bond work. And two of the firms that are doing the work are firms—one is the George firm. The George firm was Dabbs Sullivan; right?

Mr. DRAKE. Yes, sir. If I—

Mr. CHERTOFF. Right?

Mr. DRAKE. I'm not real clear on that. I think it was the George K. Baum, Dabbs Sullivan division.

Mr. CHERTOFF. Right. So it was—

Mr. DRAKE. It was Dubby Sullivan; right.

Mr. CHERTOFF. Right. Now the big change that we have been told went on here was an expansion of the number of firms that are involved. And we see all along for years, Stephens and Raney did the work. Then all of a sudden, we see the next two firms that joined that top group of four underwriters are this firm with Dabbs Sullivan and this firm with Dan Lasater. That is not a coincidence, is it, because you know that those two firms were firms in which, in the case of George, it was Mr. Sullivan, and in the case of Lasater, it was Mr. Lasater, you had two friends of the Governor Bill Clinton, who were principals in the firm; right?

Mr. DRAKE. That was my perception, yes.

Mr. CHERTOFF. So the big change in opening up the process here is that the two firms that now joined the top group were two firms that had as principals two friends of the Governor; right?

Mr. DRAKE. There is another reason——

Mr. CHERTOFF. Well——

Mr. DRAKE. —that I want to address.

Mr. CHERTOFF. We will get to your other reason.

Mr. DRAKE. I don't want to just come to a conclusion that just because Dan and George and Dubby knew Bill that that was the reason.

The CHAIRMAN. Counsel.

Mr. CHERTOFF. Let's first answer my question and then you can give your other reason.

Mr. DRAKE. Yes, sir. That's part of the reason, in my judgment.

Mr. CHERTOFF. OK. What's the other reason?

Mr. DRAKE. Well, at the time that Lasater & Company began to increase its volume of business in secondary mortgage-backed trading, we went from about \$500 million in quarterly trades to over \$1 billion a month. The capital of the firm grew enormously. The employees of the firm grew enormously. It was my judgment—also, I had come to the firm and I'm going to take a little bit of credit for us getting more business.

Also, there is the point that there is more securities being issued because of the visibility to issue securities and also the fact that Dubby Sullivan was instrumental in pulling AHDA's \$100 million floating rate bond issue out of almost bankruptcy. Dubby and Paine Weber were instrumental in saving Arkansas from probably the first default since the Depression.

Mr. CHERTOFF. Without the benefit of this hindsight now, Mr. Drake, I want to take you back to one of these contracts. And I want to demonstrate to you that, in your mind at the time, you very well understood the pivotal difference here that moved Sullivan and moved Lasater into the top rank was friendship with Bill Clinton.

Mr. DRAKE. I don't deny that that existed at all.

Mr. CHERTOFF. And in truth and in fact, when this police radio contract was issued, Raney and Hutton came to Lasater for the reason that Lasater was seen as a friend of Governor Clinton.

Mr. DRAKE. I don't deny that.

Mr. CHERTOFF. That is exactly the reason why it happened.

Mr. DRAKE. Exactly.

Mr. CHERTOFF. You told it to Dan Lasater?

Mr. DRAKE. Excuse me?

Mr. CHERTOFF. You told that to Dan Lasater?

Mr. DRAKE. I'm sure I did.

Mr. CHERTOFF. You said to him, "Raney has come to us because of your relationship with Bill." Is that right?

Mr. DRAKE. I'm sure I did.

Mr. CHERTOFF. As a matter of fact, these people were very frank. When the people from Raney came to you, they said to you there were only a couple of places they could go in hooking up with some connected people for this contract. They could go to Sullivan or they could go to Stephens or they could go to you. And you said to the people at Raney, "Why don't you come to us? We are just a little company." Right?

Mr. DRAKE. I did say that.

Mr. CHERTOFF. You were a little company, then; right? That's what you said to Raney. You said, "Why don't you come to us?"

Mr. DRAKE. Well, in the context of other firms that they could have gone to.

Mr. CHERTOFF. Right.

Mr. DRAKE. Like Stephens.

Mr. CHERTOFF. Right, like Stephens.

Mr. DRAKE. Sure.

Mr. CHERTOFF. So you said, "Why don't you come to us? We are a little company." Is that right?

Mr. DRAKE. Right, I did.

Mr. CHERTOFF. They said to you, "We know you. We understand your ability. We understand that Dan has a friendship with Bill." Is that right?

Mr. DRAKE. That's what they said.

Mr. CHERTOFF. And that Bill being Bill Clinton; right?

Mr. DRAKE. That's correct.

Mr. CHERTOFF. In fact, you knew that Dan Lasater had a friendship with Bill Clinton?

Mr. DRAKE. I knew Dan had a relationship with Bill.

Mr. CHERTOFF. You knew he was a friend of Bill Clinton?

Mr. DRAKE. I did know that, yes.

Mr. CHERTOFF. You did know that?

Mr. DRAKE. I did know that.

Mr. CHERTOFF. Now is it also a fact that you understood that the Governor had specifically told the Arkansas Housing Authority that they had to cut in Lasater for 15 percent of the deals?

Mr. DRAKE. I don't know if I—did I say that in my deposition?

Mr. CHERTOFF. Well, no, you didn't say it in your deposition.

Mr. DRAKE. If I did—

Mr. CHERTOFF. I am going to read you from the sworn testimony of Charles Stout. Do you remember Charles Stout?

Mr. DRAKE. I do know Charlie Stout.

Mr. CHERTOFF. He was the Chairman of the Housing Authority between 1983 and 1985; right?

Mr. DRAKE. Right.

Mr. CHERTOFF. He was originally appointed by Frank White and then he continued under Bill Clinton; right?

Mr. DRAKE. I know he was appointed by Frank. I don't know if he continued with Bill or not. But I concede that he may have, yes.

Mr. CHERTOFF. All right. Here at page 13, he relates the following answer in response to this:

Question: While you were a member of the HDA Board, did you have any interaction with anyone in the Governor's office?

Answer: Yes, I did.

Question: Who in the Governor's office did you have interaction with?

Answer: Bob Nash.

Question: Who is Bob Nash? We had Mr. Nash here yesterday, by the way.

Answer: He was on the Governor's staff over there. We had selected underwriters for an issue, and he called over and asked me to cut in Lasater for 15 percent. I said, "Bob, that's not right. The Governor's office is not to interfere with this Agency." And he said, "Well, that's the way we want it anyway."

You never had any wind that the Governor's office was calling over to the Agency and saying, "We want to cut this guy in on the business?"

Mr. DRAKE. I may have known about it, but I don't recall knowing about it.

Mr. CHERTOFF. Now, I want to ask you about something else, because you raised the issue of lawyers.

Mr. DRAKE. Of what?

Mr. CHERTOFF. Lawyers. You came up with the issue of lawyers.

Mr. DRAKE. Yes.

Mr. CHERTOFF. I understand that the Mitchell, Williams firm, that was Jim Guy Tucker's firm; right?

Mr. DRAKE. Jim Guy was a partner there.

Mr. CHERTOFF. Right. Betsey Wright testified she thought they were doing work on behalf of the Governor's office. And we established through the bills that, in fact, your firm and the Raney firm and the Hutton firm among you were picking up the tab for that work.

Mr. DRAKE. That's right.

Mr. CHERTOFF. I want to show you a letter, dated August 21, 1985, to Paul Young, signed by you.

Mr. FEINSTEIN. What date?

Mr. CHERTOFF. August 21, 1985.

The CHAIRMAN. At the top of it, it has Lasater & Company. You might want to look at the monitor just as a point of reference.

Mr. CHERTOFF. It says, "Dear Paul: Lasater & Company submits the following expenses for reimbursement on the referenced transaction: Travel, entertainment, and miscellaneous, \$750; Legal, organizational, and miscellaneous, \$26,500." Now, we had testimony from Mr. Raney yesterday that unlike the normal bills for legal work, which were itemized, this was un-itemized and they refused to pay the \$26,500. Do you remember that?

Mr. DRAKE. I do.

Mr. CHERTOFF. Why wasn't this bill itemized?

Mr. DRAKE. I don't know.

Mr. CHERTOFF. Is it because there really wasn't any legal, organizational, or miscellaneous work and you just wanted an additional \$26,500 to use for other purposes?

Mr. DRAKE. No. There were legal, organizational, and miscellaneous charges; and that's why we submitted it.

Mr. CHERTOFF. Why didn't you submit backup?

Mr. DRAKE. I don't know.

Mr. CHERTOFF. Well, now you know, I mean, you just told us a moment ago that one of the things that made the Lasater firm a

better, more attractive firm in this period was that you came with all your experience. You know in your experience that on these kinds of issues, the underwriter and the people who are going to pay the bills are going to want to see backup. They are just not going to roll 25 grand out on a say-so; right?

Mr. DRAKE. Probably not.

Mr. CHERTOFF. In fact, in your earlier bills, you had provided backup. You had provided the underlying legal bill for which you were seeking a reimbursement; right?

Mr. DRAKE. I may have. I don't—

Mr. CHERTOFF. But on this bill, you didn't put one single iota of detail; right?

Mr. DRAKE. I don't see anything other than this.

Mr. CHERTOFF. And you had to understand that if you didn't provide the detail there was a risk that someone might bounce the bill back; is that right?

Mr. DRAKE. Probably.

The CHAIRMAN. They did.

Mr. CHERTOFF. That's right. The bill was bounced back. Did you go back to them and say, "All right, here's the detail. Give us the money now?"

Mr. DRAKE. No, I didn't.

Mr. CHERTOFF. You—

Mr. DRAKE. Paul told me it was too late, that they had closed the books.

Mr. CHERTOFF. Well, that's not what he told us. What he told us yesterday was that they assumed you were trying to pad the bill and get some extra profit, extra money for yourselves. Is that true?

Mr. DRAKE. It could have been his impression, but it was not my recollection.

Mr. CHERTOFF. Well, what was the mystery \$26,500 for?

Mr. DRAKE. Travel, entertainment, miscellaneous, legal, and organizational.

Mr. CHERTOFF. You couldn't find one record, one receipt, one travel voucher, or one legal bill to support this?

Mr. DRAKE. If there is none attached, I didn't try.

Mr. CHERTOFF. I think before I move on to the next subject, my time is just about up.

The CHAIRMAN. Yes. We are going to go to Senator Sarbanes.

Senator SARBANES. I yield to Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator.

Mr. Chairman, as you know, Mr. Stout is scheduled to testify on this afternoon's panel. We certainly are looking forward to his testimony and an opportunity to question him about the testimony that he gave in his deposition just last night. But just for present purposes, I think it's helpful to put in the record some additional testimony that Mr. Stout provided during his deposition last night and then some related testimony from another witness who also will be appearing this afternoon on the second panel today.

Late in Mr. Stout's deposition last night, beginning at page 14, line 19, again referring to the telephone conversation that he testified about having with Mr. Nash, Mr. Stout stated the following:

Answer: Yes, sir. He [meaning Mr. Nash] called over there about 30 minutes before a board meeting, and I had to go in and tell the rest of the board members what happened.

Question: Who were the other board members at the time?

Answer: Well, let's see, Mort Hardwicke. I put Mort Hardwicke on the line when he called over there and I let Mort listen to him. Tommy Edwards, George Wright, Betty Walker, and Mr. Mallard Martin.

Presumably, those were other Board members who were present but not on the phone.

Question: OK. You were in the office when he called.

Answer: I was in the office with the Arkansas Housing Development Agency about 30 minutes before the scheduled time for a regular board meeting to pass it on to the other underwriters.

Question: And Mr. Hardwicke was in the room with you?

Answer: Yeah. I think I told Mort to pick up the phone and hear this, because it really surprised me when Bob called over.

Now it's interesting to note that Mr. Hardwicke, who, as I mentioned, is going to be a witness on this afternoon's panel along with Mr. Stout, also has given deposition testimony to this Committee. And beginning on page 79 of the transcript of Mr. Hardwicke's testimony, he gave the following testimony that is directly inconsistent with Mr. Stout's testimony that was read previously:

Question: Did the Governor's office ever identify a specific firm that they wanted to see get a certain amount of the underwriting business?

Answer: No, sir, not to me.

Question: Do you know if they did to anybody?

Answer: Not that I know anything about.

Question: So you never heard that?

Answer: I never heard of it, no.

Actually, I apologize. I gave an incorrect page cite before. That was from page 44 from Mr. Hardwicke's deposition transcript. And again, Mr. Hardwicke will be testifying later today. At that time, we will all have a chance to ask questions, both of Mr. Hardwicke and of Mr. Stout about these allegations which, at least as far as we are aware, came forth last night for the first time after more than 10 years.

Mr. Cole.

Mr. COLE. Thank you.

Mr. Drake, going back to the police radio financing, when I was discussing that with you a moment ago, you were describing the retention of the firm and then going forward with the law firm and then the drafting of the legislation. I have a question for you. I think the suggestion that has been made here clearly is that your firm, because of whatever relationship Mr. Lasater had with Governor Clinton, felt that they might have had this work sewn up.

I would like to show you a memorandum if I could, dated April 30, 1985. And just to put this in context, the records that we have indicate that the finalists for the police radio financing were selected on May 3rd and then the final contract was awarded to the Hutton/Raney/Lasater group on May 10th. Is that consistent with your recollection, sir?

Mr. DRAKE. I'm sorry. Would you ask the question again? I was busy looking at this.

Mr. COLE. Certainly, I would be glad to. This memorandum is dated April 30, 1985.

Mr. DRAKE. Yes.

Mr. COLE. And before we get into the content of the memorandum, I wanted to place it in context in terms of time and what else was going on at that time. The documents and other information that have been provided to the Committee indicate that the finalists among the firms bidding for this business, the four finalists, were selected on May 3rd and that the final award to the Hutton/Raney/Lasater group took place on May 10th. I realize you may not recall the exact dates, but is that generally consistent with your recollection of what occurred?

Mr. DRAKE. Yes.

Mr. COLE. The reason I focus on those dates is because, as I read this April 30th memorandum—and take a moment to review it if you would like, sir. First, did you prepare this memorandum?

Mr. DRAKE. Yes, I did.

Mr. COLE. Do you think you prepared it at or about the date and the time that's indicated here?

Mr. DRAKE. Yes.

Mr. COLE. April 30, 1985?

Mr. DRAKE. Yes.

Mr. COLE. As I read this memorandum, it seems to be addressed to Mr. Lasater, Mr. Locke, and Mr. Moudy from you discussing how to make your presentation to the State Police Commission at their Friday, May 3rd meeting, which, for the Committee's information, indicates is the meeting at which the four finalists were selected. Is that correct?

Mr. DRAKE. Yes.

Mr. COLE. It seems to me that what this memorandum does is lay out in some detail how you will make your presentation or, I guess, what might loosely be called a sales pitch of your firm to try to sell the State Police Commission on why your firm or your group should be awarded the contract. Is that the case?

Mr. DRAKE. Yes.

Mr. COLE. So basically, this shows that you were working and consulting with Mr. Lasater on how to try to convince the State Police Commission that your group should get the final contract?

Mr. DRAKE. Yes. I think this was a heads-up to Dan and George and to Dan Moudy.

Mr. COLE. I take it that you are familiar not only with the proposal that was submitted by the Hutton/Raney/Lasater group but also with the proposals that were submitted by your competitors?

Mr. DRAKE. I don't recall if I was. I may have been. I don't know.

Mr. COLE. Do you have a view or an opinion as to whether your proposal, in fact, was the best proposal for the State of Arkansas in economic terms?

Mr. DRAKE. I believed it was.

Mr. COLE. What do you base that conclusion on?

Mr. DRAKE. My evaluation of where we were in the marketplace at the time and the structure we had put in place in our proposal.

Mr. COLE. Was there something different about the structure that you had put in place in comparison to the other proposals?

Mr. DRAKE. Yes. The fact that we had come up with an insured transaction which lowered the effective rate, without regard to the marketplace of the securities, was very instrumental in my assessment that this was a superior proposal.

The fact that we had come up through the good offices of our attorneys and the folks at Hutton and others with an approach that was able to permit us to acquire this system quickly without going through a referendum and without having to go through the competing interests of departments trying to get a direct allocation, to me, was meritorious.

Mr. COLE. Were those factors considered by the State Police Commission at the meetings where the bids were considered? I believe you testified you attended the May 3rd meeting.

Mr. DRAKE. Yes. But I want to make a clarification. Please don't use "bid." This was not a bid. This was a proposal.

Mr. COLE. A proposal, yes. I understand. And are you familiar with the work that the members of the Commission did in reviewing the proposals and the comparisons they made, particularly Commissioner Mitchum?

Mr. DRAKE. Yes.

Mr. COLE. Do you recall what he did?

Mr. DRAKE. Yes.

Mr. COLE. What did he do?

Mr. DRAKE. He told me that he was engaging the services of an independent actuary or he had an independent actuary or access to an independent actuary or someone who worked for him or he's closely associated with who was going to evaluate the economics, the structure, the overall merits of each proposal, of each of the four finalists.

Mr. COLE. Well, let me focus on what I think are perhaps the two most important issues that we are facing here and ask you two questions. The first question would be: Do you have any doubt, sitting here today and based on your years of professional experience, that the Hutton/Raney/Lasater bid was selected because on the merits it was the best bid?

Mr. DRAKE. It's my belief that it was selected because it was the best overall proposal.

Mr. COLE. Let's take it the next step forward in time in terms of after your group was awarded that bid. Did the Lasater group make a lot of money on this transaction?

Mr. DRAKE. No, we didn't.

Mr. COLE. Why is that?

Mr. DRAKE. Well, our area of expertise in securities was mortgage-backed securities and government securities primarily in the secondary market. The deal was priced very aggressively relative to the market.

Mr. COLE. And when you say, "priced very aggressively relative to the market," do you mean in presenting your proposal, in putting together your proposal, you made certain assumptions about interest rates and other factors and priced accordingly in hopes of winning the business?

Mr. DRAKE. Well, no. The proposal we made to the State Police Commission was hedged with this caveat: This is where we believe the transaction would come if we sold it in today's market.

Now it's important to differentiate between a sealed bid where I say, "Here is my proposal. If I'm low, I own the securities," and another in which we must draw documents, get a rating, get insur-

ance, and do an official statement. No one can predict where the market may go. So we gave the best estimate.

When we brought the deal to the marketplace, it was priced in terms of yield and maturity very, very aggressively in an attempt to give the State Police Commission the best possible net interest cost. And we did not deviate, in my recollection, from our initial offering price.

And while we were offering the securities at this level, the rate for competitive securities went to this level. As the rate went up, it became more and more apparent to us that we were going to have to buy the bonds from the Commission at its original offering price and we would probably lose money.

Mr. COLE. I have no more time. But if I'm understanding what you are saying the bottom line is, you priced the bid aggressively to try to get the lowest borrowing cost for the State; and, actually, then, you did not make money on this deal or did not make a great deal of money?

Mr. DRAKE. If we made any money, it was less than \$25,000 or \$30,000.

Mr. COLE. Thank you.

Senator BENNETT. Mr. Chairman, may I ask one quick question on this before we leave it?

The CHAIRMAN. Certainly.

Senator BENNETT. I apologize. But Mr. Drake, yesterday we had the memo written by Mike Gaines to Governor Clinton. And when you said this was priced very, very aggressively, you struck a cord in my memory.

Betsey Wright wrote on the bottom of that memo, "Governor, we have a real problem here. Since street talk is that Lasater put in," I don't read her word—"unreasonably low bid hoping that it could be raised." Then the Governor has written, "Lasater should be told," underlined, "bid must be priced."

My question is, Mr. Lasater or Mr. Drake, either one of you, were you, in fact, told by anybody that you could not have any thought of raising the price once the business had come your way?

Mr. DRAKE. Senator Bennett, in all deference to Betsey, whom I admire as a wonderful public servant, she doesn't know beans about investment banking. She may have heard that we had "low balled." But there was no bid. There was no bid to low ball. It was a proposal.

Her concern, in my mind, was a concern of perception rather than reality. We submitted a proposal. We were not asked to submit a bid nor were our competitors asked to submit a bid.

Our proposal contained a provision for interest rates if the securities were sold at the moment of our submission. And if you will look at my memo of April 30th to Dan, George, and Dan Moudy, which appears to be in reaction to an assertion that we had low balled our proposal, I make it real clear that the proposals, underscored, were submitted well in advance of the financing date. It's a mystery to me why Betsey would be concerned about a low-ball "bid" when there was no bid.

The CHAIRMAN. Now look, don't split the hairs. Whether it's a bid or a proposal, her concern was that there was talk on the street. That's not a mystery to you, because obviously you wrote a letter

then as it related to the proposal coming in on the low end and, thereafter, it would be raised. So let's not split hairs with respect to whether it was a bid or a proposal, all right?

Mr. DRAKE. Mr. Chairman, I—

The CHAIRMAN. That's not the essence of the Senator's question.

Senator BENNETT. Governor Clinton has written on this memo, "Lasater should be told," underlined, "bid must be priced." My first question is: Was anybody told anything on this issue?

Mr. DRAKE. I don't recall ever being told by anyone that we had to do anything other than what we had done.

Senator BENNETT. My second observation is that while you may well be right, and probably are, in your description of the technical details of the proposal, to this layman's mind there is a connection between your statement here that this was priced very aggressively and Betsey Wright's concern about street talk—

Mr. DRAKE. Senator, my statement—

Mr. BENNETT. —being too low.

Mr. DRAKE. My statement of pricing was during the offering, not at the submission level. Pricing only occurs—aggressive pricing only occurs by definition when securities are offered, not when a proposal is made. And I apologize to you if you feel like I mislead you on that.

Senator BENNETT. No. I'm not saying you mislead me. I'm just making the observation that, in my mind, when you are asked the question, "Was this the best proposal?"—and I will use your vocabulary, because I think it's the correct one—and the answer was, "Yes, we priced it very aggressively." I don't find that inconsistent with another layman—in this case, Betsey Wright—saying we have a real problem here with regard to street talk.

Mr. DRAKE. May I respond?

Senator BENNETT. Now it may be the specifics are different, but to me there is a connection between the two.

Mr. DRAKE. Senator, if I am not mistaken, I responded to Mr. Cole's question on did we make money on the financing. And I said, we priced it very aggressively.

Senator BENNETT. We could have it read back to us. But my impression was the reason—one of the reasons you thought it was accepted was that it was priced very aggressively. If I am mistaken, I will stand corrected. I am often mistaken, and my friends don't hesitate to correct me.

Senator SARBANES. Mr. Drake, you ought to clarify when you said aggressive pricing, did you mean the proposal you submitted or did you mean the price at which you subsequently sold the bonds to investors?

Mr. DRAKE. The latter and not the former.

Senator BENNETT. All right. I have nothing further, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Well, a question just occurs to me that we've danced all around. And Mr. Drake kept talking—

The CHAIRMAN. We are going to take a break right after this. Go ahead, Senator. Excuse me.

Senator FAIRCLOTH. Mr. Lasater, did Governor Clinton ever tell you that it had to be priced where it had been listed in the proposal as—

Mr. LASATER. No, sir.

Senator FAIRCLOTH. —that it couldn't be raised?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. The Governor didn't tell you that?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. OK. Mr. Lasater, as you know, the Committee has been concerned about documents that might have been in Vince Foster's office the night of his death. Did Mr. Foster ever do legal work for you?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. Did you know Mr. Foster?

Mr. LASATER. I had met him. I didn't know him.

Senator FAIRCLOTH. He did perform work for the FDIC when they sued you in the Home Federal case and the First American case in Illinois; is that right?

Mr. LASATER. Yes, sir.

Senator FAIRCLOTH. Mr. Lasater, in the First American case, the FDIC sued you for \$3.3 million. The Rose Law Firm, acting on behalf of the FDIC, settled it for \$200,000. Ms. Clinton reviewed the settlement agreement. Did you think that it was unusual that Ms. Clinton would be hired by the government to sue you in view of your long relationship and close relationship with the Clintons?

Mr. LASATER. I didn't realize until these hearings started or possibly during the election that Ms. Clinton had anything to do with the lawsuit.

Senator FAIRCLOTH. Did you ever discuss the case with her or Vince Foster?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. As far as you know, did Patsy Thomasson ever discuss the case with Vince Foster?

Mr. LASATER. As far as I know, she did not.

Senator FAIRCLOTH. Did you have any system by which the Governor's office contacted you about bond business? Was there any system where the Governor's office would contact you when bond business was going to be available?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. You never did have a person stationed in the Governor's office?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. All right. You testified here today that you did not receive a pardon from Governor Clinton. Did this State application of pardon, as it could be characterized, allow you, for example, to get a license to sell securities or real estate?

Mr. LASATER. I'm sorry. Repeat your question.

Senator FAIRCLOTH. You stated that you did not receive a pardon from Governor Clinton. But yet, did this application or pardon, whatever it was characterized as, that you did get—I believe to buy a gun.

Mr. LASATER. As a personal pardon, yes, sir.

Senator FAIRCLOTH. Did it allow you to get a license to sell securities, insurance, or real estate? Did it not allow you to do that?

Mr. LASATER. I don't think so. The best that I recall is a felon in the State of Arkansas has a 10-year moratorium on selling securities. And real estate, I'm not—I don't know.

Senator FAIRCLOTH. Well, did you later get a State license to get back into regulated businesses, insurance, real estate? You did get a license to get back in, didn't you?

Mr. LASATER. In what?

Senator FAIRCLOTH. Into the real estate and securities business.

Mr. LASATER. I don't remember or recall ever having any personal license to sell real estate or securities after my license was revoked.

Senator FAIRCLOTH. Patsy Thomasson was a top aide of yours for a long time; is that right?

Mr. LASATER. She was.

Senator FAIRCLOTH. She had your power of attorney when you were in prison?

Mr. LASATER. She did.

Senator FAIRCLOTH. Ms. Thomasson was one of the persons who went into Vince Foster's office the night of his death. And this has been a great concern to the Committee. In view of the previous testimony here, did you ever witness Ms. Thomasson doing drugs while she was in your company?

Mr. LASATER. Absolutely not.

Senator FAIRCLOTH. Did she ever see other people doing them?

Mr. LASATER. Not that I'm aware of.

Senator FAIRCLOTH. Mr. Drake, did you leave the Lasater firm because of its reputation for drug dealings and use?

Mr. DRAKE. Partially.

Senator FAIRCLOTH. Did you use drugs while you were there?

Mr. DRAKE. I did.

Senator FAIRCLOTH. This is an important question. Did you ever see or have knowledge that drugs were used in the presence of Patsy Thomasson?

Mr. DRAKE. Never.

Senator FAIRCLOTH. Mr. Drake, did you know that in 1994, Mr. Lasater and Patsy Thomasson travelled to Belize, a South American country. Did you know that they went?

Mr. DRAKE. When, Senator?

Senator FAIRCLOTH. Well, in 1994.

Senator SARBANES. Mr. Chairman, how——

Senator FAIRCLOTH. In 1984.

Senator SARBANES. Now let me——

Senator FAIRCLOTH. 1984.

Senator SARBANES. Mr. Chairman, how far afield are we going to go here in this question?

The CHAIRMAN. I am going to let the Senator have some latitude.

Senator SARBANES. He's taking an awful lot of latitude, I think.

The CHAIRMAN. I don't think so.

Senator FAIRCLOTH. I don't think so either.

The CHAIRMAN. No.

Senator FAIRCLOTH. Mr. Drake, did you know that in 1984 that Mr. Lasater and Patsy Thomasson travelled to Belize?

Mr. DRAKE. Yes, sir.

Senator FAIRCLOTH. Did you tell the police in Arkansas that you heard that this trip was to buy drugs?

Mr. DRAKE. No, sir, I don't believe I did.

Senator FAIRCLOTH. On page 2 of the testimony you have before you, it says: "In 1984, Jim Alexander, Chuck Berry, Patsy Thomasson and Dan Lasater flew in Dan's jet to Belize to allegedly buy a cattle ranch. Michael Drake says he later heard around the office that it was also a trip to buy cocaine."

Mr. DRAKE. Senator, this is someone else's memo. This is not mine. I don't recall ever saying that to anybody.

Senator FAIRCLOTH. You did not say that?

Mr. DRAKE. I don't recall saying that, no.

Senator FAIRCLOTH. Well, on a lot of things we ask. But here is a question that has been to my office a number of times. An anonymous caller alleged that you had given Governor Clinton \$50,000 presumably after the radio contract. Did you ever give him the money, \$50,000 or close to? And could there possibly be any connection that you were trying to collect the other \$26,000 back in this bill we looked at here awhile ago?

Mr. DRAKE. No and no.

Senator SARBANES. Mr. Chairman, is this hearing going to deteriorate to the point where we are going to present questions on the basis of anonymous callers?

The CHAIRMAN. The Senator raised the question. The witness answered it.

Senator SARBANES. I know. I allowed the witness to answer because it seemed to me a preposterous question. I make my point after the fact.

The CHAIRMAN. Sure.

Senator SARBANES. Are we going to run a set of hearings here where just an anonymous phone call into an office is going to lead to a line of questions?

Senator FAIRCLOTH. Several anonymous calls into the office.

Senator SARBANES. Well——

Senator FAIRCLOTH. But I'm going back to Mr. Lasater.

The CHAIRMAN. Go ahead.

Senator FAIRCLOTH. Why did you hire Roger Clinton, the Governor's brother?

Mr. LASATER. I'm sorry. Repeat your question.

Senator FAIRCLOTH. Why did you hire Roger Clinton, the Governor's brother?

Mr. LASATER. Because I was asked to.

Senator FAIRCLOTH. By whom?

Mr. LASATER. By Governor Clinton.

Senator FAIRCLOTH. The Governor asked you to hire his brother. What did he do for you?

Mr. LASATER. He was a stable hand at my farm in Florida.

Senator FAIRCLOTH. In 3 years, from 1983 to 1986, you received \$664 million in State bond contracts. Did you not think and believe that your connection to Roger Clinton and him being the brother of Governor Clinton, do you think that had anything to do with you getting the bond business?

Mr. LASATER. No, sir.

Senator FAIRCLOTH. No connection? You didn't think that hiring the Governor's brother would help you to curry favor and friendship with the Governor and get bond business?

Mr. LASATER. I don't think hiring the Governor's brother for \$3 an hour to muck stalls at a farm in Florida would get me any business, no.

Senator FAIRCLOTH. Mr. Lasater, how many airplanes did you at one time own? At any one given time, what number did you own?

Mr. LASATER. Do you mean the most I ever owned at any one time?

Senator FAIRCLOTH. Yes.

Mr. LASATER. I think it was three.

Senator FAIRCLOTH. How many times would you estimate that the Governor flew on planes that you or your company owned or you had control of?

Mr. LASATER. I would guess two or three, four maybe.

Senator FAIRCLOTH. Did you think that this kind of favor for the Governor, helped the bond business?

Mr. LASATER. I never really considered it. No, I don't think it did.

Senator FAIRCLOTH. Why would you be hauling the Governor around if it wasn't going to?

Mr. LASATER. It was the thing to do. I mean, other corporate—

Senator FAIRCLOTH. What do you mean, it was the thing to do?

Mr. LASATER. Other corporate citizens in Arkansas provided aircraft for the Governor.

Senator FAIRCLOTH. Just everybody that had jets in Arkansas let the Governor fly?

Mr. LASATER. I didn't say that.

Senator FAIRCLOTH. What other companies provided jets to the Governor?

Mr. LASATER. Stephens provided airplanes. I'm not sure who else did, but I heard Arkla and other corporate citizens of Arkansas.

Senator FAIRCLOTH. That was pretty much a standard pattern in Arkansas, to provide a jet for the Governor?

Mr. LASATER. If the Governor called and wanted to use our airplane, you know, we let him use it.

Senator FAIRCLOTH. Did the State not have one?

Mr. LASATER. I don't think so. But we also used our airplane for other activities. We let the University of Arkansas use it. We used it for the benefit of the City of Little Rock. It wasn't just Governor Clinton that took advantage of the airplanes.

Senator FAIRCLOTH. That's all, Mr. Chairman. But it sounds like a bad way to do business.

Mr. FEINSTEIN. Mr. Chairman, with your permission.

The CHAIRMAN. Yes.

Mr. FEINSTEIN. Mr. Drake would like to—

The CHAIRMAN. Yes. We are going to take a 5-minute break. OK?

Mr. FEINSTEIN. Mr. Drake wanted to add something on the last line of questions about the airplane.

The CHAIRMAN. Oh, certainly. Go ahead, Mr. Drake.

Mr. DRAKE. Thank you, sir.

The CHAIRMAN. Now remember, when you start talking about this, you know, you invite the joiner. Do you want to talk about the

airplane? I suggest you take a break and think about it. When you come back, you can say whatever you want.

Let's take a 5-minute break.

[Recess.]

The CHAIRMAN. Now, Mr. Drake, before we start, if you want to add something about the airplane, I don't want to cut you off. So it's up to you.

Mr. DRAKE. Well, I just wanted to make a point, Senator.

The CHAIRMAN. Sure.

Mr. DRAKE. In Arkansas, we have something called the Razor-back Air Force.

The CHAIRMAN. Yeah.

Mr. DRAKE. When I was at Stephens, I noted that the corporate planes owned by various corporations around Arkansas were made available to the Athlete Department, to the Governor——

The CHAIRMAN. It is not uncommon, let the record note, for the use of airplanes to accommodate officials, et cetera. And in those cases where they have to be reimbursed, they are reimbursed, and to be used for other institutions, educational, et cetera. So we note that for the record. We understand that.

Mr. DRAKE. Thank you.

Mr. FEINSTEIN. Thank you, Senator.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Let me ask you, Mr. Drake, was there a practice at Lasater & Company to deduct on a mandatory basis money from the commissions that salesmen got as compulsory campaign contributions?

Mr. DRAKE. As what, sir?

Mr. CHERTOFF. Compulsory campaign contributions.

Mr. DRAKE. I don't recall compulsory, no.

Mr. CHERTOFF. Well, let me take the word "compulsory" out. Was there a practice of deducting from sales commission checks an amount for campaign contributions?

Mr. DRAKE. If the employee wished to make a contribution in the midst of a business day, it was not uncommon for that to occur.

Mr. CHERTOFF. So was it something that the employee initiated or was it something that was initiated for the employee unless the employee raised an objection?

Mr. DRAKE. I can only speak from my experience. And it was—— it was at the employee's discretion.

Mr. CHERTOFF. Well, Mr. Lasater, let me ask you, since it was your firm. Did they take money out of sales commissions for contributions?

Mr. LASATER. We have, yes.

Mr. CHERTOFF. Were sales people told that they were expected to kick in because they were getting benefits from the bond issues?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Were people told that they didn't have a choice about giving the contributions?

Mr. LASATER. No, sir, they were not.

Mr. CHERTOFF. Were people told that they had to raise money for Clinton and that's why the deductions were being made?

Mr. LASATER. Repeat that question.

Mr. CHERTOFF. Were people told that the firm had to raise money for Governor Clinton and that's why deductions were being made from the commission checks?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Would you agree with me that compelling people to make campaign contributions or pressuring them to make campaign contributions is inappropriate?

Mr. LASATER. I don't know that.

Mr. CHERTOFF. You don't. You think it's OK——

Mr. LASATER. I didn't say that.

Mr. CHERTOFF. —to compel people to give campaign contributions if they are employed by you?

Mr. LASATER. Repeat the question, the first question.

Mr. CHERTOFF. All right. Is it right or wrong to require employees to make political contributions, whether they want to or not?

Mr. LASATER. I don't have an opinion on that. I don't think it would be right, though.

Mr. CHERTOFF. Is it right or wrong to make somebody who is an employee give a mandatory political contribution?

Mr. LASATER. I think that would be wrong.

Mr. CHERTOFF. Did you ever do that?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Did anyone in your firm ever do that?

Mr. LASATER. Not that I'm aware of.

Mr. CHERTOFF. And just to make sure that we are clear on the record from you, Mr. Drake, are you aware of any cash for any purpose being given directly or indirectly to anybody in the Governor's office?

Mr. DRAKE. No, sir, I'm not.

Mr. CHERTOFF. Now, I want to go back to a little bit of this testimony to kind of make sure we are clear on the record concerning this statement you made that when you left the Lasater firm you did so, in part, because of the reputation the firm had for cocaine abuse. When did you leave the Lasater firm?

Mr. DRAKE. I don't recall exactly. In the mid-1980's.

Mr. CHERTOFF. What year?

Mr. DRAKE. 1986, 1987, it could be. I don't recall exactly.

Mr. CHERTOFF. And at the time you left, one of the considerations you have indicated was that there was a reputation in the community that the firm had for abusing cocaine?

Mr. DRAKE. Yes, as well as my own abuse.

Mr. CHERTOFF. Now going back again to February 1985, Mr. Lasater, which is right in the middle of this activity where you have your meeting with the Governor, there's the February 15th letter written, there's the police radio contract coming upon the horizon, questions were raised about the extent to which it was known or understood that you and your firm had a cocaine issue. There was a trial going on of Mr. Anderson in February; correct?

Mr. LASATER. I don't know the date of that trial.

Mr. CHERTOFF. I will tell you.

Mr. LASATER. I will take your word for it.

Mr. CHERTOFF. You remember the trial?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. Your name came up in the trial.

Mr. LASATER. I seem to sort of remember that, but I—you know, I don't know for sure.

Mr. CHERTOFF. Well, I imagine it would be a matter of concern to a person who is a bond dealer, whose reputation for integrity presumably is of some importance in terms of your work, to be aware whether in Federal Court people are making accusations of connections with narcotics activity; right? It would be a matter of some interest to you?

Mr. LASATER. Yes.

Mr. CHERTOFF. Do you recall testimony by Mr. Anderson, who was a defendant in the case, that he had been told by Roger Clinton that the State Police were interested in having Mr. Anderson target three people in an undercover operation—Mr. Clinton's drug supplier, Anderson and Lasater, that being you?

Mr. LASATER. I don't recall that, no.

Mr. CHERTOFF. Let me refresh your memory. It is from an Arkansas Gazette article, dated February 28, 1985. This is Mr. Anderson's testimony being cited here. It's DKSX 17635. "Anderson said Clinton told him"—that's Roger Clinton—"that he had been approached by State Police investigators and that he was 'very, very frightened—totally frightened to death.' He said Clinton informed him that the investigators wanted to 'set up' three people—Clinton's drug supplier, Anderson and Lasater." Now that was testimony in the trial. Is it your testimony that this did not come to your attention?

Mr. FEINSTEIN. We just need a moment to catch up with you. We are looking for the article.

Mr. CHERTOFF. Sure. It has got a headline——

Mr. FEINSTEIN. We have it. He just needs to read it.

Mr. CHERTOFF. OK.

Mr. FEINSTEIN. Thank you.

Mr. CHERTOFF. I will read it with you again: "Anderson said Clinton told him that he had been approached by State Police investigators and that he was 'very, very frightened—totally frightened to death.' He said Clinton informed him that the investigators wanted to 'set up' three people—Clinton's drug supplier, Anderson and Lasater."

Mr. LASATER. Yes, I see that.

Mr. CHERTOFF. Do you remember that testimony?

Mr. LASATER. No, I really don't.

Mr. CHERTOFF. Let me ask you—I mean, because obviously you had some degree of involvement in certainly facilitating Roger Clinton's problem with drugs in the early 1980's. Did you ever wonder if the Governor was going to take it out on you, that he was going to get angry at you for it?

Mr. LASATER. You know, I had a serious drug problem at the time. And you know, I wasn't really making good judgment calls at that time or I wouldn't have been using cocaine in the first place. So——

Mr. CHERTOFF. Well, that goes without saying. But you were capable of exercising enough judgment to be the principal in a bond underwriting business; right?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. And do you have any question in your mind about whether on a day-to-day basis you were behaving so erratically that people could tell that you were somehow not functioning properly?

Mr. LASATER. No, I don't think that I was behaving out of line too bad.

Mr. CHERTOFF. Certainly when you met with Governor Clinton on however many occasions, do you recall any times he said to you, Dan, you have a problem of some kind. You're acting strangely?

Mr. LASATER. I don't recall that.

Mr. CHERTOFF. Now, you were asked, Mr. Drake, about this trip to Belize. I take it, Mr. Lasater, there was a trip to Belize; right?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. And you were on the trip?

Mr. LASATER. I was.

Mr. CHERTOFF. Ms. Thomasson was on the trip?

Mr. LASATER. She was.

Mr. CHERTOFF. You were read a portion of a Report of Interview that an Arkansas investigator recorded in 1986, Mr. Drake. Why don't you get that in front of you?

Mr. FEINSTEIN. Do you want Mr. Lasater to look at it or Mr. Drake?

Mr. CHERTOFF. Mr. Drake. Mr. Lasater can look at it, too.

Mr. DRAKE. I have it.

Mr. CHERTOFF. Mr. Drake, on page 2, you were—the investigator recorded his interview—I don't mean recorded on a tape. I mean, he made a record—

Mr. DRAKE. Correct.

Mr. CHERTOFF. —of his interview with you, which attributes to you, "Michael Drake says he later heard around the office that it was also a trip to buy cocaine." Now, my question to you, Mr. Drake, is you previously testified that you are not denying the accuracy of the investigator's report as it was prepared in 1986, you know, roughly contemporaneously with the interview. You said you didn't recall it. Now is it your testimony here that you deny saying this to the investigator?

Mr. DRAKE. No, I don't deny it.

Mr. CHERTOFF. So again, you are in the same position. I mean, you don't remember it, but you are not in a position to deny that the investigator was accurately recording the information you were giving him at the time?

Mr. DRAKE. That's correct.

Mr. CHERTOFF. In fact, we know from you, Mr. Lasater, that you, in fact, did take this trip to Belize.

Mr. LASATER. I did.

Mr. CHERTOFF. What was the reason for this trip?

Mr. LASATER. There was a 12,000 acre cattle ranch that was shown to us by a man by the name of Carver, I think it was, or Garver or something, out of Oklahoma. And we went—that was at a point in time I had just sold out of the horse business and I had a lot of cash and I was looking at different investments.

Mr. CHERTOFF. OK. You went down with a guy named Jim Alexander?

Mr. LASATER. Yes.

Mr. CHERTOFF. And he was walking around with a night scope or something, one of these things you can use to see in the dark at night?

Mr. LASATER. Right.

Mr. CHERTOFF. I mean, that really happened. You are acknowledging that?

Mr. LASATER. Well, that's what I was told happened. I know in—it was either in New Orleans or in Little Rock.

Mr. CHERTOFF. Did you have a problem with customs on your way back?

Mr. LASATER. Well, that's what I was just talking about. Either in Little Rock or New Orleans, I think it was, that they asked Mr. Alexander to step outside and they visited with him. And he had something like night vision or I don't know what he had.

Mr. CHERTOFF. Did you have any idea why customs would have been interested in talking to one of the passengers on your plane?

Mr. LASATER. No, sir.

Mr. CHERTOFF. And did they search your plane?

Mr. LASATER. I'm sorry?

Mr. CHERTOFF. Did they search your plane?

Mr. LASATER. I can't recall if they did or not. I really don't think they did.

Mr. CHERTOFF. Did you try to get some kind of a special permit or something from the FAA at one point that allows you to kind of fly in and out of the country without stopping at a designated, you know, border or entry point?

Mr. LASATER. Yes. When we were flying to Canada alot, we asked for special permission to go through customs at Little Rock rather than wherever the stop over would have been, maybe Chicago or Detroit or something.

Mr. CHERTOFF. Did you get that?

Mr. LASATER. I don't think so. I don't recall ever getting it.

Mr. CHERTOFF. I am going to ask you for the record, is it your testimony that contrary to what Mr. Drake evidently told the investigator was the talk in the office in 1986, is it your testimony that in 1984 this trip down to Belize with the guy with the night goggles to look at property had nothing to do with drugs?

Mr. LASATER. That's absolutely correct.

Mr. CHERTOFF. Were you guys using drugs on the plane when you went down?

Mr. LASATER. No, sir, we were not.

Mr. CHERTOFF. By the way, did this fellow, Jim Alexander, also make some comment about taking the local land commissioner out or killing him or something like that?

Mr. LASATER. Do what now?

Mr. CHERTOFF. Did this guy, Jim Alexander, you flew down with, did he make some kind of a comment that it might be a good idea to take one of the local land commissioners out to get rid of him in some way?

Mr. LASATER. There was the statement, something like that, made at dinner.

Mr. CHERTOFF. Dinner with who?

Mr. LASATER. We were with a group of local government people and my people.

Mr. CHERTOFF. What did Mr. Alexander say?

Mr. LASATER. He said something to the effect that we just need to take him out.

Mr. CHERTOFF. "Him" being some local official?

Mr. LASATER. Right.

Mr. CHERTOFF. Take him out, you understood, to be to kill him?

Mr. LASATER. That was my interpretation. I got up and left the table immediately.

Mr. CHERTOFF. Did Mr. Alexander fly back with you on the——

Mr. LASATER. He did.

Mr. CHERTOFF. By the way, was this FAA permit, you said it was for Canada? Didn't you also try to get a permit to allow you to make your entry at Little Rock for trips south of the 30th parallel?

Mr. LASATER. I don't recall that.

Mr. CHERTOFF. That would be Latin America?

Mr. LASATER. But I am not going to dispute it.

Mr. CHERTOFF. That would be for Latin America?

Mr. LASATER. I don't recall that.

Mr. CHERTOFF. Would you make——

Mr. LASATER. I can't—I think that was the only time that I took my plane out of the country south.

Mr. CHERTOFF. To Belize?

Mr. LASATER. I think so.

Mr. CHERTOFF. You didn't make any other trips in the plane to Latin America?

Mr. LASATER. I can't recall any right now.

Mr. CHERTOFF. You had a fair amount of contact with Governor Clinton during the early 1980's; isn't that correct?

Mr. LASATER. A fair amount.

Mr. CHERTOFF. You were out at the Mansion a number of times?

Mr. LASATER. I can recall being at the Mansion once, maybe twice.

Mr. CHERTOFF. Do you dispute that you were—putting aside how many times you specifically recall being at the Mansion, do you dispute being at the Mansion on a number of occasions?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. It didn't happen?

Mr. LASATER. It didn't happen.

Mr. CHERTOFF. Did you ever come to the Mansion and go in through the back door, through the kitchen?

Mr. LASATER. I can't ever recall going through the back door.

Mr. CHERTOFF. Did Mr. Clinton come visit you at the office?

Mr. LASATER. Possibly one time.

Mr. CHERTOFF. Just one time?

Mr. LASATER. Possibly two.

Mr. CHERTOFF. Well, let we ask——

Mr. LASATER. He certainly wasn't a frequent visitor.

Mr. CHERTOFF. Did you, by the way, take a trip with the Governor to the Kentucky Derby in 1983?

Mr. LASATER. I don't think so.

Mr. CHERTOFF. In the airplane?

Mr. LASATER. I'm sorry?

Mr. CHERTOFF. In the airplane?

Mr. LASATER. I don't think so.

Mr. CHERTOFF. Getting back to the Mansion, would you agree with me that you, in fact, were probably at the Mansion about a half a dozen times?

Mr. LASATER. No.

Mr. CHERTOFF. If there were testimony—well, let me see if I can—you are positively denying it or you are simply saying you don't remember?

Mr. LASATER. And I do not remember ever being there that many times.

Mr. CHERTOFF. I am going to read to you from the deposition of a man named Barry Spivey. Do you know who Barry Spivey is?

Mr. LASATER. No.

Mr. CHERTOFF. He is a trooper, I guess, who was on the Governor's Security Detail for a period of time in the 1980's. And I think there is a copy of an excerpt of that in front of you, starting at page 23.

Senator SARBANES. Is this a deposition that the Committee took?

Mr. CHERTOFF. No. It's a deposition from a civil case.

Senator SARBANES. Do we have a copy of it?

Mr. CHERTOFF. We have given a copy of the deposition. I know there was a copy given at a deposition that we gave to the Democrats in a deposition yesterday, because I know Mr. O'Callaghan turned it over.

Mr. COLE. In fact, Mr. Chertoff, I've never seen the document that's on the screen there. And I notice it doesn't have the Committee code on it.

Mr. CHERTOFF. I'm talking about a different document.

Mr. COLE. I know. But I'm curious about the one on the screen that I have never seen before either. It doesn't have the Committee's code.

Senator SARBANES. Yes, I want to ask about that one. But I will do it when we get our time here.

Mr. CHERTOFF. If I could just have a minute to kind of get—

Mr. FEINSTEIN. For the record, Mr. Chairman, we don't have a copy of the document.

Mr. CHERTOFF. Mr. Lasater, I take it you do remember that the Governor had troopers in the Security Detail?

Mr. LASATER. Yes.

Mr. CHERTOFF. I want to read you a portion—I see my time is up, so we will go through it more at length. I am simply going to ask you whether you accept or you deny this sworn testimony of this trooper? Page 23, line 13:

Question: Do you remember Dan Lasater coming to the Mansion?

Answer: Yes. And I remember going to Dan's a lot. We went down there more than Dan came down there, I would say.

Senator SARBANES. Who is this testifying?

Mr. CHERTOFF. This is Barry Spivey, a trooper, I guess he is a corporal in the troopers in Arkansas. He was in the Security Detail in the mid-1980's to the Governor.

Question: Let's take it separate. How many times did Dan Lasater, to the best of your recollection, come to the Mansion while Governor Clinton was in the Mansion?

Answer: I was out there a lot of time. I didn't live out there.

Question: OK. On your shift, on your watch.

Answer: I probably took Bill down there by Dan's office. See, Butch Locke, ex-representative, I think, got in some legal problems and had to serve a little stint in the joint. Let's see—Locke, Lasater and, Butch Locke, Dan Lasater and then Lasater bought them all out.

Is that correct, by the way? Did Butch Locke go to jail?

Mr. LASATER. Yes.

Mr. CHERTOFF. OK. So that's part is correct.

The CHAIRMAN. Who is this fellow, Butch Locke?

Mr. CHERTOFF. That's the partner with Collins, Locke & Lasater.

Mr. LASATER. Are you asking me that, Senator?

The CHAIRMAN. Yes, I wanted to get a frame of reference. I don't know this fellow, Butch Locke.

Mr. LASATER. He's a past State Senator and he was also a partner in Collins, Locke & Lasater. And he was also indicted at the same time I was.

The CHAIRMAN. OK. Go ahead.

Mr. CHERTOFF. And he is the fellow at whose bankruptcy the Judge made the negative finding about your credibility?

Mr. LASATER. That's correct.

Mr. CHERTOFF. You testified on his behalf in the bankruptcy.

Mr. LASATER. I'm sorry.

Mr. CHERTOFF. You testified on his behalf in the bankruptcy; is that right?

The CHAIRMAN. Go ahead.

Mr. LASATER. I must have. You know, I must have lost my mind, but I—

Mr. CHERTOFF. All right. OK. At page 24, line 1:

Question: Is Collins—

Answer: Yeah. And right here close was their office. We're just almost in the same area. I would have to drive around to find it, but it was right here close somewhere. I remember a lot of times.

I am repeating this—

I remember a lot of times taking Bill down to Dan's office and he would jump out and I'd circle and wait until he come back and, or I would go inside and stay in the lobby. I never went up behind the closed doors.

Do you disagree with that?

Mr. LASATER. No.

Mr. CHERTOFF. Do you deny that he came up to see you a lot of times?

Mr. LASATER. Yes, I do.

Mr. CHERTOFF. Maybe I should stop now, because—

The CHAIRMAN. Well, I'm going to—

Senator SARBANES. Go ahead.

The CHAIRMAN. Why don't we try to finish this? Go ahead.

Mr. CHERTOFF. It says:

Question: Let's take the Mansion first. How many occasions did you—

Answer: Did I know personally that Dan came to the Mansion?

Question: Yes.

Answer: During the—

Question: During the Clinton Administration.

Answer: I probably saw him, just like you said—on my watch and up until 1984, I probably saw Dan half a dozen times at least. And I'm going to say that I took him by his office even more than that, just me personally.

Do you agree or disagree with that statement?

Mr. LASATER. I disagree with that.

Mr. CHERTOFF. [Continuing:]

Question: When he came—

Answer: I'm going to say maybe half a dozen times, and it could have been anywhere from two to ten. We're just kind of splitting the difference. I know it was more than once and it could have been considerably more than even one and I don't know how much more. You know, I didn't pay any attention to that sort of thing then. You know, it was 10, 12, 15 years ago and Dan was just Dan.

I remember his car and I remember his face. I knew him personally.

Did you know Barry Spivey personally?

Mr. LASATER. No. I don't recall who he is at all.

Mr. CHERTOFF. Did you ever make chit-chat with the Governor's troopers, be polite, be pleasant?

Mr. LASATER. Anytime I would see anyone like that, I would always say hello whether I knew them or not.

Mr. CHERTOFF. Now:

I knew who he was because of his horse racing. I went to Oaklawn a lot. That's how I got to know Dan, was through the thoroughbred stuff over there. Even before Clinton was Governor, I knew of Dan Lasater. We weren't acquaintances. I knew him—he didn't know me—

He admits that you didn't know him.

—through his horse racing.

Question: What kind of car did he drive into the Mansion?

Answer: It seemed to me like he would come in in a vehicle similar to what we would drive the Governor in—a leased vehicle, either a Lincoln-type vehicle—you know, a luxury car.

Is that what you used to drive back then, a Lincoln or a luxury-type of car?

Mr. LASATER. For a short period of time, I had a Lincoln limousine, maybe for 6 months or 8 months or so.

Mr. CHERTOFF. What else did you drive?

Mr. LASATER. A Mercedes most of the time.

Mr. CHERTOFF. OK.

Question: Would you happen to remember the license plate?

Answer: Oh, Lord, no.

Question: And was Dan Lasater logged in when he came in?

Answer: You know, some of us—there was a big turnover here, during Bill's administration, in security and I'd rather not go into why. It gets into personalities and stuff. There was a big turnover and a lot of the guys got to stay there longer. I was there 5 years, which is considered a long time. You burn out or get run off before then.

A lot of us knew some people and just didn't pay as much attention to them as some of the guys. I probably personally wouldn't log Dan in because I knew that he and Bill were friends, that they visited socially. I had flown on his plane.

Did troopers ever fly on your plane with Governor Clinton?

Mr. LASATER. I don't know. I have never been on the plane with Governor Clinton, so I don't know who was on the plane with him.

Mr. CHERTOFF. You have never been on the plane with Governor Clinton?

Mr. LASATER. No. I have been on the plane with Roger Clinton but not Governor Clinton.

Mr. CHERTOFF. [Continuing:]

I had flown on his plane. I knew that Bill spent a lot of time at Dan's office, and that Dan spent time at the Mansion.

Again, you dispute that sworn testimony?

Mr. LASATER. I'm sorry. I wasn't paying attention.

Mr. CHERTOFF. "I knew that Bill spent a lot of time at Dan's office, and that Dan spent time at the Mansion."

Mr. LASATER. Yes, I dispute—

Mr. CHERTOFF. You dispute that?

Mr. LASATER. I dispute that.

Mr. CHERTOFF. [Continuing:]

So I personally wouldn't log him in because it wasn't significant. It had no bearing on anything other than maybe it was just a personal, personal visit.

Question: Let me ask you this: On what sort of occasions would Dan Lasater come? Would there be official functions, scheduled appointments, or casual visits?

Answer: There would be drop-ins, drop, you know, Bill had, we could monitor—sitting out in the guard shack, we could monitor.

I think I will go another page. I am not going to go on indefinitely, just so we get it clear that, you know, we have this and you are going to give us your version.

There would be drop-ins, drop, you know, Bill had, we could monitor—sitting out in the guard shack, we could monitor. We monitored every phone call with the exception Bill had a private line that wouldn't light up out there. On our phone, we had six numbers and if anybody on the Mansion grounds was talking, a light would be lit up for—but Bill had a private line that we had, did not have access to, did not know the number, did not want to know it.

He could have been up there talking all day long to someone, and we wouldn't have knowledge about it.

OK. I will skip over the phone stuff unless anyone thinks that I'm being—

The CHAIRMAN. No, go ahead.

Mr. CHERTOFF. And move to page 27, line 10:

Question: All right. Can you tell me what sort of occasions Dan Lasater came to the Mansion for?

Answer: Well, he dropped in, but now I'm not saying Bill didn't call him on his private line or have maybe us to call him and have him come by where it would be just him by himself. And he would also come for public functions, not public but official functions. And he would also come by himself and he would, where it appeared to me, the best I recall, would be just kind of off-the-cuff, drop-in things or in and out, you know."

Is that true or false?

Mr. LASATER. That's false.

Mr. CHERTOFF. [Continuing:]

I don't recall any overnight stays or anything particularly outstanding about any of Dan's visits. You know, he was, he—I didn't pay much attention because he, there wasn't any reason to.

Question: And would he come at random times during the day and night or were they just day visits?

Answer: I can't say. You know, it could have been both.

Question: Uh-huh.

Answer: Day, night, weekends, all day. It didn't, he came when he wanted to.

Question: OK.

Answer: We didn't stop him. We knew better. I knew better. Some of the guys, like I said, they were new, you know. There were people that were there very long, you learned who to intercept and who not to intercept.

And then I will just close with the following passage at the bottom of page 28, line 18:

Question: So Dan Lasater, in your view, or at least on your watch, was one of the ones that just got waved on?

Answer: He did on my, like you said, on my watch, because I knew Dan. I knew his face, what he drove. I knew his relationship with the Governor was personal and professional and private or whatever it was, on every level. And he—I don't know—I can't speak for anybody but myself.

Mr. LASATER. The Lincoln Mercury or Lincoln that he talked about—

Mr. CHERTOFF. Yeah.

Mr. LASATER. —I have never driven that car in my life. That was a limousine, and I had a driver at the time that drove that car.

Mr. CHERTOFF. Well, but you do acknowledge that he's correct in identifying you had been either personally driving or being driven in a Lincoln-type car?

Mr. LASATER. I have been, yes.

Mr. CHERTOFF. Now, you deny his testimony about the quality and nature of your relationship with the Governor?

Mr. LASATER. Yes, sir, I do.

Mr. CHERTOFF. On these issues of recommendations for particular appointments, did you have personal conversations or did the Governor call you up and check with you on recommendations?

Mr. LASATER. No.

Mr. CHERTOFF. Well, I'm going to put up for my last portion of this segment DK—

Mr. LASATER. I don't recall—I don't recall that.

Mr. CHERTOFF. Well, I will stimulate your memory.

Mr. LASATER. OK.

Mr. CHERTOFF. DKSJ 27453. It is a message pad from the Governor's Mansion. It says: "Message for," and it begins for BC. And you can see the handwriting in the "Message" and the "BC" is the same pen and the same handwriting. It says: "For BC from Dan Lasater, Number 376-0069." Was that your number at the time?

Mr. LASATER. Yes, it was.

Mr. CHERTOFF. It says: "Linda Trent appointment to Arkansas Housing Development Agency. Please call Dan this a.m." Then we see, again, the Governor's characteristic checkmark. The handwriting is the same ink as the checkmark. It says and there are initials of people that he is passing the message on to. Then it says, in the Governor's own hand, a note: "He's for her." Now remember the Governor calling you to verify that you were for Linda Trent?

Mr. LASATER. No, I don't recall that.

Mr. CHERTOFF. Do you have reason to believe that when the Governor wrote, "He's for her," in response to this message that he call you back, do you have reason to doubt that he, in fact, called you back and asked you for your opinion?

Mr. LASATER. No, I don't dispute that.

Mr. CHERTOFF. Pardon?

Mr. LASATER. I do not dispute that.

Mr. CHERTOFF. All right. Do you know whether Linda Trent got appointed to the Housing Development Agency?

Mr. LASATER. No, I do not.

Mr. CHERTOFF. I think this is a good time to stop, Mr. Chairman. The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. How much more time does he need?

The CHAIRMAN. You mean, in terms of—

Senator SARBANES. To finish up here?

The CHAIRMAN. About 45 minutes. Why don't I suggest—

Senator SARBANES. There is going to be a vote at 2:00 p.m. Why don't we continue—

The CHAIRMAN. Is there really going to be a vote at 2:00 p.m.?

Senator SARBANES. Apparently.

The CHAIRMAN. Well, then why don't I—

Senator SARBANES. Why don't we finish up this panel before the votes? Then, we can do the others after the votes.

The CHAIRMAN. Well, if you want to try.

Senator SARBANES. Yes. Could I ask a question about this? I'm not clear whose statement this is that is being quoted from.

Mr. CHERTOFF. It's a deposition, Mr. Chairman, in the case called *Reed vs. Young*.

Senator SARBANES. No, no. I have that. The other statement.

Mr. CHERTOFF. It's Barry Spivey.

Senator SARBANES. The other statement, the other statement.

Mr. CHERTOFF. Oh, I think Mr. Drake testified that he had given an interview to an investigator in Arkansas. This is the Arkansas investigator's report.

Senator SARBANES. Who is that?

Mr. CHERTOFF. A man by the name of DeLaughter, D-e-L-a-u-g-h-t-e-r. Is that right, Mr. Drake?

Mr. DRAKE. That's correct, yes, sir.

Senator SARBANES. Now, I am not quite clear where this came from. If I could ask, I mean, we don't have a copy of this and it's not Committee marked.

Mr. CHERTOFF. I thought, Mr. Chairman, we had given copies.

Senator SARBANES. Just now. But it's not part of the Committee's records and I'm curious as to where it came from.

Mr. CHERTOFF. I received it from a staff member who got it from I know not where. In preparing for the hearing today, it seemed to me it was relevant and worth asking the witness about.

The CHAIRMAN. Well, let's ask—

Mr. CHERTOFF. And the witness has authenticated it.

Senator SARBANES. Well, let's ask where it came from.

The CHAIRMAN. If I could, let us ascertain for the record when and where the investigator was sworn and at what time. And we will do that.

Senator SARBANES. And how it came to the Committee.

Mr. CHERTOFF. I don't think it's a sworn statement. I think it appears to be similar to the way the FBI does reports of interviews and they put it in the file. It appears to be a report of interview that's in an investigative file. And I guess, Mr. Drake, you can bear out that you remember being interviewed as part of a State Law Enforcement Investigation?

Mr. DRAKE. Right.

The CHAIRMAN. I'm going to ask that we not waste a great deal of time at this point but that we attempt to ascertain from where that interview took place. And if Counsel agrees, we will depose the witness, the trooper, if they feel that's necessary.

Senator SARBANES. Well, Mr. Chairman, I am interested in this, because it seems to run very counter to our procedures. And I would like to know what the sequence was here. So I appreciate the Chairman's indication that we will find out that information. We will yield our turn and await Mr. Chertoff's next turn.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Now are you familiar with a place called Coxper Farms, Mr. Lasater?

Mr. LASATER. I'm sorry, what was the name?

Mr. CHERTOFF. A Coxper Farms.

Mr. LASATER. Coxper?

Mr. CHERTOFF. Yes.

Mr. LASATER. Coxper property, yes.

Mr. CHERTOFF. Do you own a piece of that?

Mr. LASATER. No, I do not.

Mr. CHERTOFF. Did you ever live down there on that premises?

Mr. LASATER. I'm sorry?

Mr. CHERTOFF. Have you ever lived on that property?

Mr. LASATER. No. I have had an office there. And we have had a hunting lodge there.

Mr. CHERTOFF. And——

Mr. LASATER. But it was both one in the same.

Mr. CHERTOFF. Do you still have that?

Mr. LASATER. That property is owned by Southeast Investments, which is Ken Sheeman, and my children's trusts have an option to purchase a portion of that property.

Mr. CHERTOFF. Now it is owned by Ken Sheeman. Who is Ken Sheeman?

Mr. LASATER. He is an attorney.

Mr. CHERTOFF. With what firm?

Mr. LASATER. Everett, something, Sheeman and Mars in Fayetteville, Arkansas.

Mr. CHERTOFF. How long has he been with that firm?

Mr. LASATER. Three or four months.

Mr. CHERTOFF. Is he a friend of yours?

Mr. LASATER. Yes.

Mr. CHERTOFF. Where was Mr. Sheeman before 3 or 4 months ago when he went to this new firm?

Mr. LASATER. He was at the Rose Law Firm.

Mr. CHERTOFF. How long had he been at the Rose Law Firm?

Mr. LASATER. I don't know.

Mr. CHERTOFF. Years?

Mr. LASATER. I met Mr. Sheeman in 1987 or 1988. So he was at the Rose Law Firm at that time.

Mr. CHERTOFF. Did you ever have any dealings with Madison Guaranty Savings & Loan?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. What were the dealings you had with Madison Guaranty Savings & Loan?

Mr. LASATER. Lasater & Company had an account with them and sold them some securities. Also there was a time-share project that I owned within the holding company that sold Madison Guaranty \$7 million in time-share paper.

Mr. CHERTOFF. Now would you explain what that is, that transaction?

Mr. LASATER. It's receivables. You know, if you sell a unit of time share, they get—there's a mortgage.

Mr. CHERTOFF. Right.

Mr. LASATER. And you have a receivable. That's what I'm talking about, those receivables.

Mr. CHERTOFF. So in plain English—I mean——

The CHAIRMAN. In layman's language.

Mr. CHERTOFF. In layman's language, a receivable is basically a second IOU?

Mr. LASATER. It's a note, yes.

Mr. CHERTOFF. Right. So you had these IOU's or these notes for the time shares and you sold \$7 million to Madison Guaranty Savings & Loan?

Mr. LASATER. Yes, I did.

Mr. CHERTOFF. When was that?

Mr. LASATER. Where was what?

Mr. CHERTOFF. When was that? When did you do that?

Mr. LASATER. I don't know—1983, 1984, 1985. No, it had been later than that. I would have had to have—I didn't buy the project, I don't think, until 1983. So it had to have been 1984 or 1985.

Mr. CHERTOFF. It was while Jim McDougal owned the bank?

Mr. LASATER. Yes, he did.

Mr. CHERTOFF. What was the name of the project?

Mr. LASATER. Emerald Isle.

Mr. CHERTOFF. Was there someone in particular in your holding company that had responsibility for that project?

Mr. LASATER. Yes.

Mr. CHERTOFF. Who was that?

Mr. LASATER. Dan Moudy.

Mr. CHERTOFF. And was Patsy Thomasson involved with that project at all?

Mr. LASATER. Yes, she was.

Mr. CHERTOFF. What was her degree of involvement?

Mr. LASATER. Well, later she ran the project. But that was after I was incarcerated and that was after the notes were sold.

Mr. CHERTOFF. How did you come to sell \$7 million of notes to Madison Guaranty Savings & Loan?

Mr. LASATER. We did it through the investment banking firm.

Mr. CHERTOFF. Which one?

Mr. LASATER. Lasater & Company.

Mr. CHERTOFF. I mean, did you solicit them to buy them or did they solicit you to make the purchase?

Mr. LASATER. Lasater & Company solicited them to buy them.

Mr. CHERTOFF. Now did they also open up a trading account with Lasater & Company?

Mr. LASATER. Yes.

Mr. CHERTOFF. When was that?

Mr. LASATER. When?

Mr. CHERTOFF. Yes.

Mr. LASATER. I'm guessing 1983, 1984, somewhere in there.

Mr. CHERTOFF. How did that come about? How did Madison Guaranty Savings & Loan come to open up an account with—

Mr. LASATER. A salesman just called him.

Mr. CHERTOFF. Just an accident?

Mr. LASATER. Right. Well, it's not an accident. It was intentional.

Mr. CHERTOFF. But it's a happenstance. There is no connection between that and the sale of the—

Mr. LASATER. No.

Mr. CHERTOFF. —time shares?

Mr. LASATER. No.

Mr. CHERTOFF. Did you seek to get assistance from Governor Clinton in your dealings with political figures in other States?

Mr. LASATER. Yes. I contacted—or someone contacted Governor Clinton to introduce us to the Governor of New Mexico after we bought the real estate development, Angel Fire, in 1984.

Mr. CHERTOFF. Angel Fire was a development in New Mexico?

Mr. LASATER. It was.

Mr. CHERTOFF. Was it you personally who sought to have Governor Clinton make the introduction or did you send someone else to do that?

Mr. LASATER. I don't recall doing it personally. It would probably have been Patsy.

Mr. CHERTOFF. Did the Governor make the introduction?

Mr. LASATER. Yes, he did.

Mr. CHERTOFF. Did Governor Clinton make the introduction?

Mr. LASATER. Over the phone, yes.

Mr. CHERTOFF. Tell us about that.

Mr. LASATER. That's about it.

Mr. CHERTOFF. Well, he made——

Mr. LASATER. Toney Anaya was the Governor's name. He came to Angel Fire. We had some—at the—we had a celebration after I purchased the resort and had an outdoor party. And he came up for that.

Mr. CHERTOFF. And tell us, how did the introduction get made?

Mr. LASATER. I don't recall. I didn't do it myself.

Mr. CHERTOFF. How do you know that Governor Clinton made an introduction over the phone to the Governor of New Mexico?

Mr. LASATER. That's just what I recall.

Mr. CHERTOFF. Were you present when Governor Clinton made the call?

Mr. LASATER. No.

Mr. CHERTOFF. Did the Governor of New Mexico tell you that he had been called by Governor Clinton?

Mr. LASATER. I think he did, yes.

Mr. CHERTOFF. Did he tell you what Governor Clinton had said?

Mr. LASATER. I don't recall that, no.

Mr. CHERTOFF. Did he indicate to you that Governor Clinton had invested in New Mexico?

Mr. LASATER. Yes.

Mr. CHERTOFF. So we have that introduction to the Governor of New Mexico. Any other introductions through Governor Clinton?

Mr. LASATER. You mean to political figures?

Mr. CHERTOFF. To political figures, first to political figures.

Mr. LASATER. I can't recall any right now.

Mr. CHERTOFF. Were there any other introductions to business figures through Governor Clinton?

Mr. LASATER. No.

Mr. CHERTOFF. None at all?

Mr. LASATER. Not that I can recall.

Mr. CHERTOFF. When did you open Angel Fire?

Mr. LASATER. I'm sorry?

Mr. CHERTOFF. When did you open Angel Fire?

Mr. LASATER. Well, I purchased it in I think it was August 1984.

Mr. CHERTOFF. Describe what was there when you purchased it?

Mr. LASATER. It was an existing resort, ski resort, 28,000-acre real estate development.

Mr. CHERTOFF. Was their an airstrip?

Mr. LASATER. There was.

Mr. CHERTOFF. Did you use the airstrip?

Mr. LASATER. I did.

Mr. CHERTOFF. With your airplanes?

Mr. LASATER. Yes.

Mr. CHERTOFF. Where did you keep your airplanes, by the way, hangared, or were they typically kept in Arkansas?

Mr. LASATER. Central Flying Service.

Mr. CHERTOFF. Which is where?

Mr. LASATER. Little Rock.

Mr. CHERTOFF. Did you use any other airports for your airplanes in Arkansas?

Mr. LASATER. You mean did I ever fly into any other airports?

Mr. CHERTOFF. Yes.

Mr. LASATER. I have been to Monticello, Arkansas. Thank God, I was never in Mina.

Mr. CHERTOFF. Never flew into Mina.

[Laughter.]

Did your airplanes ever make their way to Mina?

Mr. LASATER. No, sir, they did not.

Mr. CHERTOFF. And you're going to tell us you had no connection with any activities there?

Mr. LASATER. No, sir, I have none.

Mr. CHERTOFF. Did you ever have any connection with any activities involving the flying or the transportation of drugs by air from one point to another?

Mr. LASATER. Are you asking me if I have ever had drugs on an airplane?

Mr. CHERTOFF. I'm not limiting it to if you were personally, well, all right, let's—

Mr. LASATER. For my own personal use is the only time I've ever transported drugs.

Mr. CHERTOFF. What quantity would that be?

Mr. LASATER. An ounce, maybe two ounces at the most.

Mr. CHERTOFF. And other than that, have you had drugs transported on airplanes when you were not on the airplane?

Mr. LASATER. Not that I'm aware of.

Mr. CHERTOFF. By the way, you mentioned I think earlier a in response to one of the questions, that you had an employee or perhaps your driver carry drugs for you or hold drugs for you?

Mr. LASATER. Yes, sir.

Mr. CHERTOFF. Why would you direct someone else to hold the drugs for you?

Mr. LASATER. It was against the law to carry drugs.

Mr. CHERTOFF. So you would have someone else hold them so that they would get in trouble?

Mr. LASATER. I just didn't want to carry them.

Mr. CHERTOFF. Well, I can't argue with the logic of that. So your testimony is you didn't have any, you never directed or requested anybody to transport drugs from one point to another by air?

Mr. LASATER. Yes sir, that's my testimony.

Mr. CHERTOFF. Did you become aware of an investigation into narcotics trafficking that involved your resort in New Mexico?

Mr. LASATER. There was an article in the Albuquerque paper that someone sent me a copy of recently that brought that up. And I know there was an article in The Wall Street Journal or local paper up here that Representative Leach was looking into that.

Mr. CHERTOFF. Put aside articles. From your own knowledge or from what people told you who were at the resort, or people that you had employed or had social relationships with, did you ever hear that investigators were asking questions concerning narcotics trafficking in that resort, that affected that resort in New Mexico?

Mr. LASATER. I don't recall that, no.

Mr. CHERTOFF. Never remember hearing anything about that?

Mr. LASATER. I don't recall it, no.

Mr. CHERTOFF. Now, Mr. Lasater, I want to go back to this question of your visits to the Mansion and the question of the Governor visiting you. Do you know of a reason why a trooper would make up a story about visits that you had with Governor Clinton either at your office or at the Mansion?

Mr. LASATER. No, sir, I don't, but, you know, there's been another trooper that's made up a lot of stories too, that L.D. Brown. You know, I don't understand him, and I'm not putting Mr. Spivey in that category. But you know, Terry Reed made a lot of accusations which were unfounded and untrue. I don't, you know, this is my first experience in politics.

Mr. CHERTOFF. Well, the troopers, I mean, because you must have encountered the troopers from time to time in dealing with Governor Clinton, even if they were just on the scene. My question to you is, I mean, maybe there's something you had with the troopers on a personal level or institutionally that would give them a motive to lie about you. So I want to ask you straight out, is there anything you know about Trooper Spivey or any other trooper that you could give us as a reason why they would make up stories about your having more visits with Governor Clinton than you actually had?

Mr. LASATER. No, sir.

Mr. CHERTOFF. Is there any reason—

Senator SARBANES. Actually, Spivey said two to ten, didn't he? And Lasater said two.

Mr. CHERTOFF. Well, I think what he said was, and I'm happy to go back into it, this is page 26, line 2: "I knew that Bill spent a lot of time at Dan's office and that Dan spent time at the Mansion." And the Trooper goes on to say that you were such a regular figure that you didn't even get logged in. They kind of waved you through.

Senator SARBANES. Yes, but earlier he said, when he was asked how many occasions did he come to the Mansion, he says, half a dozen. Then he says, I'm going to say maybe half a dozen times, and it could have been anywhere from two to ten.

Mr. CHERTOFF. Well, fine. Do you accept that, that you were there from two to ten times?

Mr. LASATER. No, I wasn't—I can recall being at the Governor's Mansion possibly twice, and those were social events. I think one time was when Bob Hope was in town and they had some kind of a party over there for him, and some other social function. I have never been to the Mansion on a personal basis.

The CHAIRMAN. All right. So you're saying now to the Committee that you went to the Mansion on two occasions, it was social. One was Bob Hope, one was another, but that you never went there on a personal visit to see the Governor. Is that correct?

Mr. LASATER. That's correct. And I have no reason to lie about that, Senator.

The CHAIRMAN. I just wanted to get it. Let's move this.

Mr. CHERTOFF. I just wanted to make sure there's no ambiguity because he also goes on to say, and I'll go back here, I'll move on to page 30, at line 8, if you want to find it and follow along.

Question: Now, would you say that Governor Clinton went to Lasater's once a month, twice a month? Could you characterize the frequency of the times they saw each other, either at Lasater's office or at the Mansion?

Answer: Well, he could have went a lot more than I was aware of. He could have went 2 days in a row and not again for a month, but I wouldn't have had access to a—I know he went a lot more times than he went when I was with him. If he went as much as when the other guys were driving as he did with me, he went a lot because like I said, we were very seldom—

Well, I'll delete the expletives.

Senator SARBANES. No, go ahead and put it in. We don't have this guy before us. I mean, I think this is rather irregular, frankly. You drag in here 10 pages out of an oral deposition of Spivey in an action in the U.S. District Court in the Eastern District of Arkansas on a case of—who is this guy Terry K. Reed who brought this case?

Mr. CHERTOFF. Mr. Chairman, I have no idea what the underlying case is about. I am only concerned about, you know, we have sworn testimony that someone has seen fit—

The CHAIRMAN. Did you go to the Governor or did the Governor come to your office on a regular basis? How many occasions do you recall, if any, that the Governor came to visit you?

Mr. LASATER. One or two times in my office. He was at my home one time. We rebuilt an older home there in 1984, and we invited 50 or 60 people, and he stopped by, by himself, for 10, 15, or 20 minutes.

The CHAIRMAN. So you are saying the Governor came to your home on one occasion where you had 50 or 60 people, and he came to your office on no more than two occasions?

Mr. LASATER. That's correct.

The CHAIRMAN. And you're sure about that?

Mr. LASATER. I'm—well, yes, I mean, I am sure.

The CHAIRMAN. OK, fine.

Mr. CHERTOFF. Mr. Lasater, this is the last question. I'm going to ask you to listen carefully to what the trooper says, and then tell me whether you accept it or reject it. The trooper says, under oath, again, page 30, line 19:

But we very seldom were in the area when he had any time on his hands that he didn't run in. He went by there a lot, by his office a lot.

Mr. LASATER. That's just absolutely not true.

Mr. CHERTOFF. And you can't think of a reason why the trooper would make it up?

Mr. LASATER. I have no earthly idea.

Senator SARBANES. You all finished?

The CHAIRMAN. Yes, all done. Go ahead.

Senator Sarbanes.

Mr. KRAVITZ. Mr. Lasater just lest anyone put too much significance on your answer to the last question you were asked about whether you had any reason to believe, or you have any reason to believe that Mr. Spivey would have a motive for testifying untruthfully, you testified earlier that you don't know Mr. Spivey. Correct?

Mr. LASATER. That's correct.

Mr. KRAVITZ. So whether Mr. Spivey has been terminated unfairly by the State or might have gotten into some other trouble or had some reason why he might want to testify untruthfully against Governor Clinton, you would have no way of knowing; correct?

Mr. LASATER. That's correct.

Mr. KRAVITZ. The fact that you don't know that is meaningless?

Mr. LASATER. That's right. I do not know that.

Mr. KRAVITZ. That's all we have. Thank you.

The CHAIRMAN. I want to thank the panel.

We stand in recess until 2:15 p.m., unless votes start thereafter, we'll wait until the termination of whatever votes. Otherwise, we'll take a recess until 2:15 p.m.

[Whereupon, at 1:40 p.m., the Committee was recessed, to reconvene at 2:15 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. Can I ask the witnesses to stand for the oath.
[Witnesses were sworn.]

The CHAIRMAN. I want to start on the left and ask each of you, Mr. Hardwicke, Mr. Wright, Ms. Chandler, Mr. Stout, and Mr. Epes, if you have any statement that you would like to give to the Committee.

Mr. Hardwicke.

SWORN TESTIMONY OF MORT G. HARDWICKE ARKANSAS DEVELOPMENT FINANCE AUTHORITY [ADFA]

Mr. HARDWICKE. No.

The CHAIRMAN. Mr. Wright.

SWORN TESTIMONY OF GEORGE H. WRIGHT, JR. ARKANSAS DEVELOPMENT FINANCE AUTHORITY [ADFA]

Mr. WRIGHT. No, sir.

The CHAIRMAN. Ms. Chandler.

SWORN TESTIMONY OF LINDA D. CHANDLER FORMER ACTING PRESIDENT ARKANSAS DEVELOPMENT FINANCE AUTHORITY [ADFA]

Ms. CHANDLER. No, sir.

The CHAIRMAN. Mr. Stout.

SWORN TESTIMONY OF CHARLES STOUT ARKANSAS HOUSING DEVELOPMENT AGENCY BOARD MEMBER 1980-85 AND CHAIRMAN 1983

Mr. STOUT. No.

The CHAIRMAN. Mr. Epes.

SWORN TESTIMONY OF S. WOOTEN EPES FORMER PRESIDENT ARKANSAS DEVELOPMENT FINANCE AUTHORITY [ADFA]

Mr. EPES. No.

The CHAIRMAN. Senator Sarbanes.

[No response.]

The CHAIRMAN. Senator Bennett.

[No response.]

The CHAIRMAN. Mr. Chertoff.

[No response.]

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Good afternoon, panel.

If we could put up on the Elmo the April 12, 1983 Board Minutes. On April 12, 1983, if I could reacquaint everyone with this, the Arkansas Housing Development Authority Executive Board met to consider eight proposals for underwriters for AHDA bond offerings for multifamily housing.

Do we have that? We seem to be missing a document.

Mr. Stout, why don't I begin with you. You were on the Board of the Arkansas Housing Development Authority between 1980 and 1985; am I right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. What did the Arkansas Housing Development Authority do?

Mr. STOUT. Well, we approved selling bonds to the underwriters.

The CHAIRMAN. Mr. Stout, would you pull that microphone up closer to you. That's it.

Mr. STOUT. To provide low-interest loans to the first-time home-buyers.

Mr. GIUFFRA. You were the Chairman of the Board in 1983; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Governor Clinton was then the Governor of the State of Arkansas?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. That was his sort of second go round. He had just defeated Mr. White so it was the very beginning of his second term as Governor of Arkansas; right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. And how did the Arkansas Housing Development Authority normally go about selecting underwriters for its bond offerings?

Mr. STOUT. Well, they would submit proposals and the Committee would review the proposals and present them to the full board and the full board would make the selection.

Mr. GIUFFRA. Did you normally select underwriters based on merit, try to get the best underwriter for the offering?

Mr. STOUT. Yes, we did.

Mr. GIUFFRA. And you considered facts such as the underwriter's experience.

Mr. STOUT. Experience, stability.

Mr. GIUFFRA. Ability to do the issue at a low cost for the State. Those were the factors you took into account?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Mr. Epes, you ran the ADFA Board at a later time. You were the President of ADFA; right?

Mr. EPES. Yes, sir.

Mr. GIUFFRA. When you ran ADFA, the criteria that you took into account were based on merit; am I right?

Mr. EPES. Yes, sir.

Mr. GIUFFRA. You considered stability, experience, reputation of the underwriters; isn't that right?

Mr. EPES. Actually we had a scoring grid which had a list of criteria which we relied upon.

Mr. GIUFFRA. But those were merit-based criteria; am I right?

Mr. EPES. Yes, sir.

Mr. GIUFFRA. Ms. Chandler, you were the Executive Director of AHDA for a period in 1993; am I right?

Ms. CHANDLER. That's right.

Mr. GIUFFRA. You also in selecting underwriters based it on merit; is that right?

Ms. CHANDLER. That was part of it; right.

Mr. GIUFFRA. And political considerations were not taken into account?

Ms. CHANDLER. Not at all.

Mr. GIUFFRA. Mr. Stout, in 1983, while you were the Chairman of the Board of AHDA, were you contacted by the Governor's office?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Who contacted you from the Governor's office?

Mr. STOUT. Bob Nash.

Mr. GIUFFRA. Who was Bob Nash?

Mr. STOUT. He was on the Governor's staff.

Mr. GIUFFRA. Was he Senior Assistant to the Governor for Economic Affairs?

Mr. STOUT. I have no idea.

Mr. GIUFFRA. But you knew Mr. Nash; right?

Mr. STOUT. Knew him well.

Mr. GIUFFRA. You knew his voice?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. And you are quite certain you spoke to Bob Nash?

Mr. STOUT. Yes.

Mr. GIUFFRA. Did you consider him a top aide to the Governor?

Mr. STOUT. I suppose, yes.

Mr. GIUFFRA. He had formerly been a member of your board; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Now what did Mr. Nash say to you?

Mr. STOUT. He called me and recommended that we start using the Lasater firm.

Mr. GIUFFRA. Did he recommend that you use the Lasater firm or indicate to you that you should use the Lasater firm?

Mr. STOUT. I'm not sure if it was a recommendation or what, but I got the gist of the conversation.

Mr. GIUFFRA. And the gist of the conversation was that AHDA should begin to use the Lasater firm for its bond underwritings?

Mr. STOUT. Yes.

Mr. GIUFFRA. Did you say anything to Mr. Nash?

Mr. STOUT. I said this is a little unusual. This is the first time that you have ever recommended a usage here, and I do not think it's right.

Mr. GIUFFRA. Why did you not think it was right for Mr. Nash to be telling you that you should be using the Lasater firm for AHDA bond offerings?

Mr. STOUT. Heretofore, they had always been selected by the Directors and here he was suggesting a certain underwriter that we start using. It could have been any underwriter, I guess.

Mr. GIUFFRA. But you did not believe it was right for the Governor's office to tell the AHDA Directors what underwriters they should use; right?

Mr. STOUT. Or Bob Nash.

Mr. GIUFFRA. Bob Nash in particular. Were you under the impression that Mr. Nash was delivering an important message to you? Do you recall saying that at your deposition?

Mr. STOUT. I guess I did.

Mr. GIUFFRA. When the Governor's aide calls you up and gives you an important message, you feel you have to take some action, don't you?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Now when you told Mr. Nash that you didn't think it was the right thing to do, what did Mr. Nash say to you?

Mr. STOUT. I think he said that's still my suggestion. I think that's what he said.

Mr. GIUFFRA. Did Mr. Nash indicate to you that that was the way we wanted it anyway?

Mr. STOUT. I don't know whether it was "we" or "I."

Mr. GIUFFRA. But he said that's the way it should be, that Mr. Lasater should get some of the bond underwriting business of AHDA? Is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Did Mr. Nash indicate to you a specific percentage of the bond underwriting business that Lasater should get?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. What was that specific percentage?

Mr. STOUT. Fifteen percent.

Mr. GIUFFRA. And you are quite certain that this conversation occurred?

Mr. STOUT. I'm positive.

Mr. GIUFFRA. Did Mr. Nash indicate to you why he believed that Lasater should be included in future AHDA bond offerings?

Mr. STOUT. I don't think he did. I got the gist that we should start using Lasater though.

Mr. GIUFFRA. Did he say anything to you about the experience of the Lasater firm?

Mr. STOUT. No, sir.

Mr. GIUFFRA. Were you familiar with the Lasater firm?

Mr. STOUT. No, sir.

Mr. GIUFFRA. This was the first you'd ever heard of the Lasater firm?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. After you said it was wrong for Mr. Nash to tell you who AHDA should use, did Nash say anything more other than that's the way we want it?

Mr. STOUT. I don't remember. I really don't.

Mr. GIUFFRA. But he definitely indicated that you should use Mr. Lasater and Lasater should get 15 percent of the business?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. During the 5 years when you were a Director of AHDA and the 1 year when you were Chairman, are you aware of any other instance in which the Governor's office or a Governor's aide gave you a directive to use a specific underwriter?

Mr. STOUT. No, sir.

Mr. GIUFFRA. Are you aware of any other instance when the Governor or someone on his staff told you that a specific underwriter should get a certain percentage of the business?

Mr. STOUT. No, sir.

Mr. GIUFFRA. This was very unusual, wasn't it?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. You were very surprised by Mr. Nash's request; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. You thought that it threatened the independence of the AHDA; is that right?

Mr. STOUT. Yes, I did.

Mr. GIUFFRA. Because the Directors of the HDA are supposed to pick the underwriters, not the Governor?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. The Governor does appoint the members of the HDA but this was an independent agency; right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. During the conversation you had with Mr. Nash, did he mention any other underwriting firms?

Mr. STOUT. No, sir.

Mr. GIUFFRA. He didn't direct you to use any other underwriting firms besides the Lasater firm; right?

Mr. STOUT. No.

Mr. GIUFFRA. Is that correct?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Just Lasater. Am I right that the call from Mr. Nash came about 30 minutes before an HDA Board meeting?

Mr. STOUT. That's correct.

Mr. GIUFFRA. The call lasted about 4 minutes; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Now when Mr. Nash called you, did you indicate to anyone who was present, Mr. Hardwicke, that Mr. Hardwicke should get on the phone because this was an important call?

Mr. STOUT. I asked one Board member, I think it was Mr. Hardwicke, to get on and listen to the conversation.

Mr. GIUFFRA. And you wanted him to listen because you thought this was an important conversation. Just so everyone knows, HDA was the housing agency for the State of Arkansas; right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. To provide mortgages to people to buy homes; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. It ultimately was replaced by ADFA, the Arkansas Development Finance Authority?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. That had a broader mandate to do bond underwritings; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Mr. Hardwicke did not participate in the conversation, as best you recall?

Mr. STOUT. That's the way I recall it.

Mr. GIUFFRA. He just listened to what Mr. Nash was saying.

Now prior to this Nash phone call, had the Lasater firm ever participated in an HDA bond offering as an underwriter?

Mr. STOUT. Not to my knowledge.

Mr. GIUFFRA. You had been on the Board for 3 years before that; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Do you recall anything more about the conversation that you had with Mr. Nash?

Mr. STOUT. No.

Mr. GIUFFRA. After the conversation was concluded, did you discuss the call with Mr. Hardwicke?

Mr. STOUT. I think we did, the best I recall.

Mr. GIUFFRA. Did you indicate to Mr. Hardwicke that you believed it was wrong for the Governor's office to call you and tell you, the HDA Board members, how to run the Agency?

Mr. STOUT. I don't remember. I really don't.

Mr. GIUFFRA. You understood that Mr. Hardwicke was a friend of Governor Clinton's; right?

Mr. STOUT. He was an appointee of Governor Clinton.

Mr. GIUFFRA. Did he indicate to you that he thought there was anything wrong with Mr. Nash's request?

Mr. STOUT. I don't remember.

Mr. GIUFFRA. After the phone call, did you and Mr. Hardwicke make a decision as to whether he should speak to the other HDA Board members about Mr. Nash's request that Lasater get 15 percent of the business?

Mr. STOUT. I thought that Mort talked to the other Board members. I don't know. It's been a long time ago, and I've had a stroke and my memory's not good.

Mr. GIUFFRA. But the conversation with Mr. Nash is clear in your mind; right?

Mr. STOUT. Yes.

Mr. GIUFFRA. You're certain that conversation happened?

Mr. STOUT. Absolutely.

Mr. GIUFFRA. That was an important event and you remember it, even though it's more than 10 years ago. Now after the conversation with Mr. Nash, am I correct that the Lasater firm was included as an underwriter in future HDA bond offerings?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. So they were made part of the team; right? After you spoke to Mr. Nash, you followed Mr. Nash's directive; right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. In effect, what had happened was the Governor's office had picked one of the underwriters for future HDA offerings; is that right?

Mr. STOUT. I suppose.

Mr. GIUFFRA. That's what happened, wasn't it, not the normal procedure; is that right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Normally the Board picks the underwriters; right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. That had been your prior experience during the time you had been an HDA Board member?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Let's put up on the Elmo the February 17th Board Minutes. I believe you testified a few minutes ago that the call came just before a Board meeting, about a half hour before. Was that your recollection?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. This is the first time that we have looked back through the minutes of the HDA. There was a Subcommittee Meeting, and I'll just read it into the record. It says, quote:

Chairman Stout called the meeting to order, and stated that the purpose of the meeting was to discuss a proposed solution to the problems with the current Single-Family Bond Program. After discussion, it was determined that the composition and breakdown of underwriters in this proposal be as directed below.

Then it's got Dabbs Sullivan, G.K. Baum, Blyth Eastman Paine Webber, they get 60 percent of the offering. T.J. Raney gets 13⅓rd percent; Stephens gets 13⅓rd percent, and Collins, Locke & Lasater get 13⅓rd percent. So right after this conversation with you and Mr. Nash, Lasater gets just under 15 percent, just under what Mr. Nash had requested.

Ms. CHANDLER, if I could just direct some questions at you. You had been working at HDA for about 5 years as of this point?

Ms. CHANDLER. Four.

Mr. GIUFFRA. Prior to this February 17th meeting at which they were given a portion of the single-family bond offering, had the Lasater firm ever participated in an HDA offering that you are aware of?

Ms. CHANDLER. Not that I'm aware of.

Mr. GIUFFRA. The single-family bond offering, that was a troubled bond offering, wasn't it?

Ms. CHANDLER. Yes, it was.

Mr. GIUFFRA. There had been sort of problems with regard to the financing?

Ms. CHANDLER. It was actually a funding of a previous issue. There was no problem with this issue.

Mr. GIUFFRA. The prior issue there'd been a problem?

Ms. CHANDLER. We were refunding a portion of the previous single-family issue that we had not been able to get out. The interest rates had dropped close to the interest rate on this issue, and I think they're about \$23 or \$24 million still left out of I think a \$75 million or \$100 million issue.

Mr. GIUFFRA. Prior to the inclusion of Lasater in this deal, had you even heard of the Lasater firm?

Ms. CHANDLER. Not that I recall.

Mr. GIUFFRA. The other underwriters are all underwriters that you were aware of; right?

Ms. CHANDLER. Yes. T.J. Raney and Stephens had participated in every issue since I came to the Board.

Mr. GIUFFRA. They were considered top-flight underwriters in Arkansas; right?

Ms. CHANDLER. I would think so.

Mr. GIUFFRA. Let's put up the April 12th Board Minutes on the Elmo. The first bond offering you were focusing on was the single family. Let's turn to multiple family bond offerings. Ms. Chandler, your Agency did single- and then multiple-family bond offerings, didn't you?

Ms. CHANDLER. That's right.

Mr. GIUFFRA. On April 12th, there was consideration given to a new multiple-family bond offering proposal. You recall that; right?

Ms. CHANDLER. Right.

Mr. GIUFFRA. At that meeting, the Board made a decision that Merrill Lynch, a New York firm, would be the lead underwriter. Do you recall that?

Ms. CHANDLER. Yes, I do.

Mr. GIUFFRA. That would be the normal procedure, to get a big New York firm to be the lead underwriter?

Ms. CHANDLER. That's correct.

Mr. GIUFFRA. Then the two Arkansas firms that were selected were Stephens and T.J. Raney; right?

Ms. CHANDLER. Right.

Mr. GIUFFRA. The Rose Law Firm was the bond counsel; right?

Ms. CHANDLER. Right.

Mr. GIUFFRA. Let's turn to the April 19th meeting which would be about a week later. Now that meeting, Ms. Chandler, was called in order to approve a decision that had been made on February 17th with regard to the single-family bond offering; right?

Ms. CHANDLER. That's correct.

Mr. GIUFFRA. At that meeting, something somewhat out of the ordinary happened; am I right?

Ms. CHANDLER. Yes.

Mr. GIUFFRA. What was it that happened?

Ms. CHANDLER. At the end of the Board meeting, one of the Board members recommended adding Collins, Locke & Lasater to the single-family, to the multifamily account.

Mr. GIUFFRA. So what was happening was a decision was being made to change a decision that had been made the previous week to just limit the multifamily to Stephens and T.J. Raney, and another firm, the Lasater firm, was going to be added. Is that right?

Ms. CHANDLER. That's correct, Collins, Locke & Lasater.

Mr. GIUFFRA. What happened was Mr. Hardwicke made a request for further business. We have that on the screen. Then Mr. Wright made a motion that the Lasater firm be included as part of the underwriting syndicate; right? And were you very surprised by this decision to include the Lasater firm?

Ms. CHANDLER. Yes. It had not happened since I had been at the Agency to add an additional underwriter after the issue had been approved.

Mr. GIUFFRA. Of course, the Board had already acted and the deal was done.

Ms. CHANDLER. Right.

Mr. GIUFFRA. Prior to the meeting, you were the Executive Director; is that right?

Ms. CHANDLER. I was either the Acting Director or Executive Director at the time; right.

Mr. GIUFFRA. You were the senior staff person at the Agency?

Ms. CHANDLER. Right.

Mr. GIUFFRA. Were you aware that this was going to happen, that there would be a motion made to add the Lasater firm to the multifamily bond offering?

Ms. CHANDLER. No.

Mr. GIUFFRA. This came as a surprise to you?

Ms. CHANDLER. Yes.

Mr. GIUFFRA. Were you concerned about this decision to add the Lasater firm?

Ms. CHANDLER. I don't know that I was concerned. I had only been the Acting Director for a few months. It had not happened on previous issues that I'd been involved in. I don't know that I was surprised that it hadn't happened before.

Mr. GIUFFRA. But it had never happened on a prior issue before; is that right?

Ms. CHANDLER. Not that I'm aware of.

Mr. GIUFFRA. Following the inclusion of Lasater on the team of underwriters for the multifamily bond offerings of HDA, did anything happen with regard to the other members of the underwriting syndicate?

Ms. CHANDLER. Such as?

Mr. GIUFFRA. Did the Stephens firm send you a letter? Let's put the Stephens letter up on April 28th. Mr. Stout actually received the letter and you got a copy of this letter; right?

Ms. CHANDLER. Yes, I did.

Mr. GIUFFRA. This was a letter dated April 28, 1983. This would be 9 days after the meeting in which Lasater was added to the underwriting team. It was from a man named Gene Wilbourn. Did you know Mr. Wilbourn?

Ms. CHANDLER. Yes, I did.

Mr. GIUFFRA. He was a Vice President at Stephens?

Ms. CHANDLER. Yes, he was.

Mr. GIUFFRA. This letter is cc'd to Governor Clinton on the second page. Why don't I just read the third paragraph of the letter. The first paragraph, Stephens is indicating they are going to withdraw from participating in this multifamily bond offering; right?

Ms. CHANDLER. Right.

Mr. GIUFFRA. You recall that, don't you?

Ms. CHANDLER. Yes, I do.

Mr. GIUFFRA. Mr. Stout, do you recall getting this letter?

Mr. STOUT. I don't recall getting it. I saw it yesterday.

Mr. GIUFFRA. Do you recall Stephens wanting to leave and no longer wanting to be an underwriter for this particular HDA offering; is that right?

Mr. STOUT. Right.

Mr. GIUFFRA. The letter says:

It has been our belief that the chief reasons for the splendid success which has been enjoyed by the Agency's bond offerings in the marketplace have been: (1) conservatively structured programs; (2) competent professional staff; and (3) a strong, independent board of directors which functioned without outside interference by political or other interests.

Then it goes on to say in the fourth paragraph:

With exception of the most recent single-family issue, the Agency has seen fit to select only those underwriters who had the most superior combination of credentials which would benefit the Agency, namely, sufficient capital to underwrite, strong sales capability, in-house technical expertise, and the ability to continue to make a market in the Agency's securities in the secondary market.

In the fifth paragraph of the letter, Mr. Wilbourn goes on to say, keeping in mind these criteria of the prior offerings, Stephens agreed to participate as an underwriter and responded to the RFP. But then it goes on to say:

In the meantime, subsequent to our selection, the Board decided, without discussion, to add to the underwriting group a firm which did not submit a proposal under the Agency proposal procedures which invited individual firm proposals.

Do you recall that Lasater had not submitted a proposal?

Ms. CHANDLER. Are you asking me?

Mr. GIUFFRA. Yes, you, Ms. Chandler.

Ms. CHANDLER. No. I think they did submit a proposal.

Mr. GIUFFRA. You think they did submit a proposal?

Ms. CHANDLER. Yes, I do.

Mr. GIUFFRA. He says:

Although it is certainly Agency's privilege to appoint any firm, we would invite you to investigate more carefully whether the added company meets the standards of capital, experience, sales capability, staff service and market support which have been the preference of the Board in all previous issues.

Do you see that?

Ms. CHANDLER. Yes.

Mr. GIUFFRA. Do you recall taking any action after you got this letter?

Ms. CHANDLER. I took no action.

Mr. GIUFFRA. Did you discuss the letter with any members of the HDA Board?

Ms. CHANDLER. I'm sure I discussed it with Charlie at the time.

Mr. GIUFFRA. Mr. Stout, do you recall discussing it with anyone, the fact that Stephens had decided to get off the offering?

Mr. STOUT. No.

Mr. GIUFFRA. Mr. Hardwicke, do you remember this letter from Stephens?

Mr. HARDWICKE. Really, I don't.

The CHAIRMAN. Could you pull that microphone up close to you, Mr. Hardwicke, so that we can hear you.

Mr. GIUFFRA. You don't recall taking any action?

Mr. HARDWICKE. I don't recall taking any action, no.

Mr. GIUFFRA. Mr. Stout, how did you first become familiar with a man named Dan Lasater, from reading newspaper accounts?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. From reading those newspaper accounts, do you recall learning that Mr. Lasater was a cocaine user?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Do you recall reading in newspaper accounts that Mr. Lasater had lent \$8,000 to Roger Clinton to help him pay off some drug debts?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Roger Clinton was the Governor's brother; right?

Mr. STOUT. Yes, sir.

Mr. GIUFFRA. Were you on the HDA Board at that time?

Mr. STOUT. I'm not sure whether I was or not.

Mr. GIUFFRA. Did you recall, while you were a member of the HDA Board, being concerned about the reputation of Mr. Lasater?

Mr. STOUT. I don't think I was concerned.

Mr. GIUFFRA. Mr. Epes, you were the President of ADFA and the Lasater firm did some underwriting work for ADFA; correct?

Mr. EPES. Yes.

Mr. GIUFFRA. Do you recall seeing some news accounts of cocaine use by Mr. Lasater?

Mr. EPES. I recall news accounts around the time of his conviction or when he pled guilty to a crime of distribution of cocaine I believe it was.

Mr. GIUFFRA. Do you recall news accounts in February 1985, in which Mr. Roger Clinton testified at the trial of a man named Sam Anderson?

Mr. EPES. No, sir.

Mr. GIUFFRA. Mr. Stout, when Governor Clinton came back into office in 1983, after defeating Mr. White, did the Clinton administration have a policy in place that the State had to use a greater number of underwriters?

Mr. STOUT. Not to my knowledge.

Mr. GIUFFRA. Ms. Chandler, were you aware of such a policy?

Ms. CHANDLER. I don't think I was aware of a policy, but I know it was discussed that we wanted to get more competitive bidding so we were going to be possibly using other firms.

Mr. GIUFFRA. Now, Mr. Wright, you were also a Board member. Did anyone from the Governor's office ever call you and say there was a policy that you should use more underwriters?

Mr. WRIGHT. No, sir.

Mr. GIUFFRA. Mr. Chertoff.

Mr. CHERTOFF. I just want to make sure, Ms. Chandler, because I think it's really extraordinary what you just said a moment ago, that the policy, as you understood it, was to have more competitive bidding. Just so it's clear, on this last set of transactions involving this particular multifamily bond issue, first again for lay people, for a firm to be included as an underwriter is a big benefit to the firm because the firm makes money off of participating in the underwriting of the bonds; right?

Ms. CHANDLER. That's correct.

Mr. CHERTOFF. So firms want to be part of that underwriting group; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. In this instance, I gather from the minutes of April 12th, that in keeping with the normal policy, there had been a submission of proposals to the Board, they had been discussed and carefully considered, and at the end of the day's meeting, it was decided that the Board or the Subcommittee considering it would recommend Merrill Lynch to be the lead underwriter, then there were two other firms to be included in the group, Stephens and T.J. Raney, both of which were local Arkansas firms; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. So at the close of business on April 12th, the recommendation of the Subcommittee carefully considering this in the normal way was to have Merrill Lynch, the New York firm, be the lead underwriter and then to have two local firms, Stephens and Raney, participate in the syndicate?

Ms. CHANDLER. Right.

Mr. CHERTOFF. A week later, all of a sudden, without regard to this proposal that had been made, kind of at the last minute, Mr. Wright makes a motion that Collins, Locke & Lasater be added to the underwriting team; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. That means now they get cut in on the benefit of participating in the issue; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. That circumvents the normal process, you know, and the careful debate that had taken place the week before; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. I take it that, both in your experience before and since, you are not aware of any other circumstance where, at the last minute, after the recommending committee had made up a list of participants, someone all of a sudden threw another name into the mix?

Ms. CHANDLER. I'm not aware of that.

Mr. CHERTOFF. That's the only time it happened?

Ms. CHANDLER. That I'm aware of, yes.

Mr. CHERTOFF. Lest we wonder about the reason for this lucky, big stroke of luck for the Collins, Locke & Lasater firm, we turn to you, Mr. Stout. And we learn that earlier in the same year, 1983, you had had a conversation with Mr. Nash in which Mr. Nash told you that he, and I presume speaking on behalf of the Governor's office, wanted to give Collins, Locke & Lasater 15 percent of these deals going forward.

Mr. STOUT. Yes, sir.

Mr. CHERTOFF. So the message came from the Governor's office in the person of Mr. Nash and the message was evidently listened to, Ms. Chandler, because we have immediately thereafter a 15 percent participating by Collins, Locke & Lasater in a single-family housing deal; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. Then when the multifamily housing deal is recommended without Collins, Locke & Lasater participation, Collins, Locke & Lasater are added at the last moment; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. Which is highly unusual?

Ms. CHANDLER. It had not happened since I had been with the Agency.

Mr. CHERTOFF. Again, just to put it in perspective, lest there be some question about the necessity of adding Collins, Locke & Lasater to have local participation, in these other deals, Stephens and T.J. Raney were local firms; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. So before Collins, Locke & Lasater was added at the last moment on this multifamily housing bond issue, the Board had already carefully considered and approved local firm participation in this matter; right?

Ms. CHANDLER. Right.

Mr. CHERTOFF. So the addition of Collins, Locke & Lasater was not necessary in order to put locals in the deal because you already had local firms in the deal?

Ms. CHANDLER. That's right.

Mr. CHERTOFF. In fact, after Collins, Locke & Lasater was voted in at the last minute, Stephens got so annoyed that they withdrew; is that correct?

Ms. CHANDLER. That's correct.

Mr. CHERTOFF. Have you had that experience before, where one of the participants in the deal was so annoyed by a breach of the normal process that they actually withdrew from the deal?

Ms. CHANDLER. No.

Mr. CHERTOFF. So that was highly unusual too; right?

Ms. CHANDLER. It hadn't happened since I was with the Agency.

The CHAIRMAN. Could I just touch on something? Mr. Wright, obviously at this April meeting, after the initial selection process, we have minutes which indicate that you made the motion to add this firm, Collins, Locke & Lasater; is that correct?

Mr. WRIGHT. That's what it says in the minutes, sir. Yes, sir, I suppose that's correct.

The CHAIRMAN. You did make that motion?

Mr. WRIGHT. Yes.

The CHAIRMAN. Why did you do that? And can you pull that microphone up to you?

Mr. WRIGHT. I think some of the conversation among the Board members, I also was on that Subcommittee that selected the underwriters.

The CHAIRMAN. Did anybody call you?

Mr. WRIGHT. Pardon?

The CHAIRMAN. Did anybody call you?

Mr. WRIGHT. No. Are you talking about did Mr. Nash call me?

The CHAIRMAN. Yes.

Mr. WRIGHT. No, sir.

The CHAIRMAN. Did anybody speak to you?

Mr. WRIGHT. We had conversation among the Board members.

The CHAIRMAN. The week before you had made a selection; right?

Mr. WRIGHT. Right. We made a recommendation. The Subcommittee made a recommendation.

The CHAIRMAN. You were on that Subcommittee?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You had recommended three bond underwriters, two locals and the lead Merrill Lynch; is that right?

Mr. WRIGHT. That's correct.

The CHAIRMAN. Now you didn't talk to the professional, the full-time employee, Ms. Chandler, did you? She says you didn't talk to her about——

Mr. WRIGHT. Didn't talk to her about?

The CHAIRMAN. About adding this new company that you had just added Collins, Locke & Lasater. You made the motion.

Mr. WRIGHT. I don't remember the specific conversations and with who as far as the Board members, but I think it was several Board members. Our thinking was to add more local firms to bond issues.

The CHAIRMAN. This is just dropped out of the blue? I mean, you have a meeting a week before; right?

Mr. WRIGHT. That's correct.

The CHAIRMAN. A week before, you had selected your three underwriters; is that correct?

Mr. WRIGHT. Our senior underwriter and two locals.

The CHAIRMAN. So now that selection was made?

Mr. WRIGHT. That's correct.

The CHAIRMAN. So the following week; right, Lasater had lost the week before?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Right?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And just out of the blue, you made a motion to add Collins, Locke & Lasater?

Mr. WRIGHT. Like I said, sir, there was conversations among the Board members that we thought we needed to add some more local firms to bond issues.

The CHAIRMAN. Who did you have your conversation with?

Mr. WRIGHT. I would assume that it was all the Board.

The CHAIRMAN. Ms. Chandler, she's the Executive Director of the Agency. You didn't consult with her?

Mr. WRIGHT. No, sir.

The CHAIRMAN. You didn't even tell her you were thinking of adding somebody else?

Mr. WRIGHT. I don't think that I probably had to, sir.

The CHAIRMAN. You just made the motion?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Did you discuss it with Mr. Stout before?

Mr. WRIGHT. I'm sure that that conversation with Mr. Stout and Mr. Hardwicke and the rest of the Board members.

The CHAIRMAN. Mr. Stout, were you aware that they were just going to move this?

Mr. STOUT. I was in Europe at the time.

The CHAIRMAN. Pardon me?

Mr. STOUT. I was in Europe at the time.

The CHAIRMAN. So you didn't discuss it with Mr. Stout?

Mr. WRIGHT. I don't know that I did.

The CHAIRMAN. Did anybody in the Governor's office call you?

Mr. WRIGHT. No, sir.

The CHAIRMAN. You didn't discuss it with him. He says he was in Europe.

Mr. WRIGHT. Nobody from the Governor's office called me, sir.

The CHAIRMAN. So you just dreamt this up?

Mr. WRIGHT. No, sir. I don't remember the specifics but what I'm saying is that the Board members had obviously discussed this. I made the motion and the motion passed unanimously.

The CHAIRMAN. Who decided that you would make the motion?

Mr. WRIGHT. It was among the Board members.

The CHAIRMAN. Among the Board members?

Mr. WRIGHT. Yes, sir. I mean, and there again, I don't remember specifically but the Governor's office or Bob Nash did not call me and ask me to do this.

The CHAIRMAN. You've heard the testimony for the past half hour now, huh?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Put yourself up here. What would you think happened? You're us. How does it sound?

Mr. WRIGHT. I don't know when the conversation with Mr. Stout and Mr. Nash happened.

The CHAIRMAN. February 17th, the month before he gets this call from Mr. Nash. Mr. Hardwicke, you got on the phone; right? Mr. Stout called you and he said, listen to this. He's very specific over here, very specific when he says he asked you to get on the phone because he was shocked. You were friends; right? So he asked you to listen in. Do you remember listening?

Mr. HARDWICKE. I don't recall listening.

The CHAIRMAN. You're not going to doubt Mr. Stout?

Mr. HARDWICKE. I don't doubt his words, no. But I don't recall the incident you're talking about.

The CHAIRMAN. But he'd have no reason to make that story up.

Mr. HARDWICKE. No.

The CHAIRMAN. So if he tells you that he remembers that he was so shocked he called and said, listen to this, you believe him?

Mr. HARDWICKE. I think he said he asked some Board member to get on the other phone.

The CHAIRMAN. Specifically you.

Mr. HARDWICKE. And I don't recall it.

The CHAIRMAN. What's your first name, Charlie?

Mr. HARDWICKE. Mort.

The CHAIRMAN. He said Mort, get on here, Mort. He wouldn't make that up, would he?

Mr. HARDWICKE. No, sir, I don't think he would.

The CHAIRMAN. My time is almost over. Here at page 15 he says:

Answer: Yes, sir. He called over there about 30 minutes before a Board meeting, and I had to go in and tell the rest of the Board members what happened.

Question: Who were the other Board members at the time?

Answer: Well, let's see. Mort Hardwicke. I put Mort Hardwicke on the line when he called over there and let Mort listen to him. Tommy Edwards, George Wright, Betty Walker, and Mahlon Martin.

Question: OK, you were in the office when he called.

Answer: I was in the office of the Arkansas Housing Development Agency about 30 minutes before the scheduled time of the regular Board meeting to pass on the underwriters.

Question: And Mr. Hardwicke was in the room with you?

Answer: Yeah. I think I told Mort to pick up the phone and hear this, because it really surprised me when Bob called over.

Question: And did Mr. Hardwicke pick up the other phone?

Answer: I think he did. Don't quote me on this, but as I remember, I think he did.

Question: But unfortunately, Mr. Stout, because this is a deposition, you're being sworn.

See he wants to be a good guy. He didn't want to throw you in and it's not easy.

We do quote you. So if you could just give me the best recollection that you have.

Answer: The best recollection I have is that I had asked him to pick up the phone and he did.

Question: Did he participate in the conversation?

Answer: No, I think he just listened.

Question: OK. Now when you told Mr. Nash that it wasn't right to do this, what reaction did he have?

Answer: He said, well, that's the way we want it anyway.

Mr. Stout wouldn't have any reason to just throw you in, being an honorable person?

Mr. HARDWICKE. No.

The CHAIRMAN. Mr. Wright, you made this recommendation. You had a discussion. What prompted the discussion? You had already picked the underwriters the week before.

Mr. WRIGHT. Maybe that conversation could have. I don't know. That's what you're leading to. I think that prompted the discussion from what it sounds like, that's what prompted the discussion.

The CHAIRMAN. You heard that the Governor's office had called?

Mr. WRIGHT. I don't recall hearing that Bob Nash called over here and said do this.

The CHAIRMAN. But you'd heard about this call. Did you hear something about the fact that the Governor's office wanted some other participation, Lasater in particular?

Mr. WRIGHT. I don't recall that specifically.

The CHAIRMAN. That could have been, huh?

Mr. WRIGHT. I suppose it could.

The CHAIRMAN. You wouldn't have just picked them out of the air, you see. That's the thing.

Mr. WRIGHT. Without the discussion of the Board members.

The CHAIRMAN. You just wouldn't have picked them out unless there was some reason; right?

Mr. WRIGHT. Unless the majority of the Board members felt like that was the thing to do.

The CHAIRMAN. I'll stop at this point and we'll proceed.

Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, I wonder just as a follow-up, was Mr. Stout at that Board meeting when this was discussed, or was he in Europe?

The CHAIRMAN. He was in Europe at the time that this name was added. Is that right, Mr. Stout?

Mr. STOUT. Yes, I was on vacation.

Senator MURKOWSKI. You were part and party in the deposition when you acknowledge, and I quote, "I didn't consider it a choice. He made a suggestion"—talking about Nash—"and I usually go along with suggestions when it's made in the Governor's office."

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. That's your statement?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. So this was before, this conversation took place before you went to Europe?

Mr. STOUT. Yes, sir. I don't really remember.

Senator MURKOWSKI. Sir, you know you had an opportunity to discuss this with the other Board members prior to your departure for Europe?

Mr. STOUT. Yes, sir. Either me or Mr. Hardwicke did. I don't remember the exact date that Bob Nash called me.

Senator MURKOWSKI. But it's conceivable then, Mr. Wright, that this information came in from the Governor's office through Mr. Stout and was brought to your attention in the general discussion and that was the rationale under which the selection of the additional underwriter was made?

Mr. WRIGHT. I guess so, sir.

Senator MURKOWSKI. So that may have been the manner in which this information—but you have no recollection of how or what motivated you to make that motion to include the other underwriter?

Mr. WRIGHT. The only thing that I vaguely remember about it is the Board members discussed adding other local underwriters to the deal.

Senator MURKOWSKI. There's no minutes to that meeting?

Mr. WRIGHT. No, sir.

Senator MURKOWSKI. Why?

Mr. WRIGHT. I would imagine that was done prior to a Board meeting. I'm not for sure.

Senator MURKOWSKI. I thought you said it was done at a Board meeting?

Mr. WRIGHT. That's when I made the motion.

Senator MURKOWSKI. In other words, it would have been discussed, you think, prior to a Board meeting in an informal discussion? You just don't recall whether or not there was a directive down from the Governor's office through Mr. Stout from Mr. Nash

that you had better do this or else you're going to fall out of favor with the Governor's office?

Mr. WRIGHT. That's correct. I don't recall it being a directive.

Senator MURKOWSKI. That certainly seems to be the conclusion I would come to.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. I'm going to yield here, but let me be clear. We are mixing two meetings up here, correct? Ms. Chandler?

Ms. CHANDLER. Sounds like it. It sounds like we are.

The CHAIRMAN. There are two meetings, no doubt about that.

Senator SARBANES. I don't think we're being very clear about it.

The CHAIRMAN. Mr. Stout first got a call in February.

Senator SARBANES. I'll develop it, Mr. Chairman.

The CHAIRMAN. As I recall, turn that light off because that certainly shouldn't be on their time.

Mr. Stout, you first got a call before a Board meeting, that's the one from Mr. Nash. You were surprised. You'd never gotten this. You turned to your friend, Mort. Mort, listen to this. This wasn't a pleasant experience, was it?

Mr. STOUT. No.

The CHAIRMAN. You even raised the question of the propriety of this. This had never taken place before; is that right?

Mr. STOUT. Yes.

The CHAIRMAN. You remember with specificity that Nash said that they wanted 15 percent. You didn't just drag that number out someplace; is that right?

Mr. STOUT. Yes.

The CHAIRMAN. Thereafter, at another Board meeting, after the award had been made with respect to the housing, the three brokers, the lead broker being Merrill Lynch, at a subsequent meeting, Ms. Chandler, without it being on the agenda, you were not advised that there would be a motion to add another underwriter to that selection, were you?

Ms. CHANDLER. No, I wasn't.

The CHAIRMAN. Heretofore that had never taken place; correct?

Ms. CHANDLER. Not to my knowledge.

The CHAIRMAN. Did it ever take place while you were at the Agency thereafter, the same kind of thing, after a selection had been made, without notice, somebody made a motion to add another underwriter?

Ms. CHANDLER. This is the last issue that I was involved in before I left the Agency.

The CHAIRMAN. Senator Sarbanes, thank you for your patience.

Senator SARBANES. Mr. Stout, when did you go on the Board?

Mr. STOUT. 1980.

Senator SARBANES. Was that by Gubernatorial appointment?

Mr. STOUT. Yes, sir.

Senator SARBANES. Who made that appointment?

Mr. STOUT. Governor Frank White.

Senator SARBANES. Was it for a fixed term of office?

Mr. STOUT. Yes, sir.

Senator SARBANES. How long was that?

Mr. STOUT. Five years.

Senator SARBANES. Five years. How long did this conversation, by your account, that you said you had with Mr. Nash take place? How long did it last?

Mr. STOUT. Approximately 4 minutes.

Senator SARBANES. Now, Mr. Hardwicke, you do not remember this conversation?

Mr. HARDWICKE. I don't recall. I don't doubt Mr. Stout's word but I do not recall listening to Mr. Nash telling the Board that Lasater should get 15 percent.

Senator SARBANES. When did you put Mr. Hardwicke on the phone, by your account?

Mr. STOUT. After Bob and I talked a few minutes and he related this to me, I asked Mort to pick up the phone to hear this. I asked him to repeat it.

Senator SARBANES. Was that the extent then of the conversation?

Mr. STOUT. I don't recall. I don't know whether we discussed anything else or not.

Senator SARBANES. So you heard this from Nash, then you said to Mr. Hardwicke, get on the phone. Then you said to Nash, repeat what you said. Is that it? Is that what happened?

Mr. STOUT. Yes, sir.

Senator SARBANES. Did you then recount this occurrence to the members of the Board?

Mr. STOUT. I don't think I did.

Senator SARBANES. You didn't say anything to any of the other members?

Mr. STOUT. I don't think I did. I left that up to Mort.

Senator SARBANES. Why did you do that?

Mr. STOUT. I don't know.

Senator SARBANES. Did you tell Mort you didn't think this was right?

Mr. STOUT. Yes, I did.

Senator SARBANES. Did you tell the other Board members that?

Mr. STOUT. I don't remember.

Senator SARBANES. You didn't think it was right. Is that correct?

Mr. STOUT. No, I didn't.

Senator SARBANES. But you didn't take any action to act on your beliefs that it wasn't right?

Mr. STOUT. No, I didn't.

Senator SARBANES. Then what happened at the Board meeting?

Mr. STOUT. I think we selected Lasater.

Senator SARBANES. Did you participate in that selection?

Mr. STOUT. I'm sure I did.

Senator SARBANES. Did you approve it?

Mr. STOUT. I was Chairman. I took the motions. And it was voted on. I didn't vote.

Senator SARBANES. And as Chairman, you didn't feel any responsibility to indicate to the Board members you didn't think this was the right thing to do?

Mr. STOUT. No, I didn't.

Senator SARBANES. Now have you recounted this to anyone else?

Mr. STOUT. Yes, sir. I related this to Frank White and Fallon Conway.

Senator SARBANES. Who is Fallon Conway and why did you tell him that?

Mr. STOUT. I was out at his house at a dinner at Frank White's to tell him that.

Senator SARBANES. What was Frank White's position at the time?

Mr. STOUT. I think he was with Commercial National Bank. I don't really know.

Senator SARBANES. Was he with Stephens & Company?

Mr. STOUT. I don't remember, I really don't.

Senator SARBANES. Do you remember when this was?

Mr. STOUT. In 1983, I think.

Senator SARBANES. Did Mr. White subsequently run against Governor Clinton?

Mr. STOUT. I think he did.

Senator SARBANES. When was that?

Mr. STOUT. Maybe 1984. I don't really remember.

Senator SARBANES. Did this issue come up in that campaign?

Mr. STOUT. No.

Senator SARBANES. I'm told that it was in 1986.

Mr. STOUT. I don't really remember.

Senator SARBANES. But you had this conversation with him ahead of that, I take it, from what you're telling me?

Mr. STOUT. Yes.

Senator SARBANES. I yield to Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Now, Mr. Stout, actually information available to this Committee indicates that in 1986, when Frank White ran against Governor Clinton again, actually former Governor White did raise alleged irregularities in bond underwriting contracts relating to Lasater & Company as a campaign issue. Do you have any recollection as to whether or not, at that time in 1986, Mr. White contacted you and said, Mr. Stout, can you remind me again what you told me back in 1983?

Mr. STOUT. I don't recall. 1986 is the year I had my stroke.

Mr. KRAVITZ. So you recall this one conversation in 1983 with Mr. White, and then no further conversations with Mr. White?

Sir, you have to answer for the reporter.

Mr. STOUT. No, I really don't.

Mr. KRAVITZ. And you have no recollection of the issue of Lasater & Company's bond underwriting contracts with the State arising during the 1986 Gubernatorial Campaign?

Mr. STOUT. No, I don't.

Mr. KRAVITZ. Other than your one conversation with former Governor White in 1983, and your conversation that you told us about just a moment ago with another man in Conway, I take it that's Conway, Arkansas?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. That your home town?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. Other than those two conversations, have you spoken with anyone about this telephone conversation you say you had with Mr. Nash back in 1983 until the time you gave your deposition before this Committee last evening?

Mr. STOUT. I don't recall that I did.

Senator SARBANES. Since 1983 until last night, you didn't speak to anyone else about this?

Mr. STOUT. Not that I recall.

Mr. KRAVITZ. You indicated—well, let me back up for a moment. When Senator Sarbanes was asking you questions, you indicated that you were appointed to the Housing Development Authority Board in 1980; is that correct?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. That was for a 5-year fixed term?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. Does the Governor's office or the Governor himself have the authority under Arkansas law to direct the Housing Authority to give a certain bond contract or a certain percentage of bond contracts to a particular firm?

Mr. STOUT. I have no idea.

Mr. KRAVITZ. Did you understand that the Housing Authority was an independent agency?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. You certainly understood that you served for a fixed term and could not be fired by the Governor. Is that right?

Mr. STOUT. I don't know that that's true but I suppose it was.

Mr. KRAVITZ. Ms. Chandler, do you know the answer to that?

Ms. CHANDLER. I don't know the answer to that.

Mr. KRAVITZ. Mr. Epes.

Mr. EPES. I think we serve at the Governor's pleasure.

Mr. KRAVITZ. Do you know the answer to that, Mr. Epes?

Mr. EPES. Yes. The Board members are appointed for a term. The Executive Director of the Agency served at the will of the Governor once the Board hired them.

Mr. KRAVITZ. So Mr. Stout, as a member of the Board, could not be fired by the Governor; is that correct?

Mr. EPES. Yes.

Mr. KRAVITZ. Mr. Stout, I assume you would agree this all happened a long time ago, 13 years ago?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. I certainly don't mean to embarrass you but I think you already mentioned that you have yourself had a stroke since that time in 1986?

Mr. STOUT. Yes, sir.

Senator SARBANES. The reason he says you have to answer, Mr. Stout, is that the reporter can't pick up the nods. You have to say.

Mr. STOUT. I understand.

Mr. KRAVITZ. I appreciate that, Senator.

Is it fair to say, Mr. Stout, that you don't recall the exact words that you or Mr. Nash may or may not have said during that conversation that you now recall having with him back in 1983?

Mr. STOUT. No, I really don't.

Mr. KRAVITZ. Just to be clear, and I think you mentioned this in your deposition last night. Your memory of this conversation with Mr. Nash was that Mr. Nash simply made a suggestion to you as to what he thought the Board should do in relation to Lasater & Company. Is that correct?

Mr. STOUT. That's correct.

Mr. KRAVITZ. This was in the nature of a suggestion rather than a directive on the part of Mr. Nash?

Mr. STOUT. That's correct, yes, sir.

Mr. KRAVITZ. So in other words, regardless of the fact that you can't remember the exact words, you're perfectly clear that this was a suggestion, not a directive?

Mr. STOUT. I think that's correct.

Mr. KRAVITZ. Just to build on that point, we now have had the opportunity to receive Mr. Nash's testimony here at these hearings twice and form our own opinions of his personality. But you told us that you knew Mr. Nash. Is that correct?

Mr. STOUT. Yes, sir, knew him well.

Mr. KRAVITZ. What was he like? Was he a forceful man? Was he a quiet man? Gentle?

Mr. STOUT. He was easygoing, not a demanding man.

Mr. KRAVITZ. Not a demanding man. Did you perceive, during this conversation that you remember having with Mr. Nash, that you were being threatened in any way?

Mr. STOUT. No, sir.

Mr. KRAVITZ. Did you perceive that something would happen to you if, for example, you did not vote to include Lasater & Company in a particular percentage of the Board's bonds?

Mr. STOUT. No, sir.

Mr. KRAVITZ. You understood that this was still a decision to be made by the independent members of this independent board; is that correct?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. Just to be clear, didn't you testify to this last night? I believe during this conversation you recall having with Mr. Nash, there was no mention of Governor Clinton's name, was there?

Mr. STOUT. No, sir.

Mr. KRAVITZ. It was Mr. Nash calling you, as you recall it?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. Just one more question on the point of your memory. Do you recall telling a member of the staff of this Committee within the past several days, over the telephone—well, let me back up. Did you speak with a member of the staff of this Committee to set up your deposition for last night?

Mr. STOUT. Yes, I did.

Mr. KRAVITZ. When was that?

Mr. STOUT. Monday afternoon, I think.

Mr. KRAVITZ. It was Monday afternoon of this week, 2 days ago?

Mr. STOUT. Yes.

Mr. KRAVITZ. And was that Mr. O'Callaghan of the Majority staff that you spoke with?

Mr. STOUT. Yes, it was.

Mr. KRAVITZ. Now during that conversation, you agreed with Mr. O'Callaghan that your deposition would be taken by telephone last night?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. That's what happened last night, Tuesday night?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. During your conversation with Mr. O'Callaghan on Monday afternoon, did you tell Mr. O'Callaghan that your recollec-

tion of your conversation with Mr. Nash was that he asked you or suggested to you that Lasater & Company should be given 30 percent, not 15 percent but 30 percent of the Housing Authority's bond business?

Mr. STOUT. I don't think so. I don't recall even talking about it.

Mr. KRAVITZ. Now, Mr. Hardwicke, if I could ask you a few questions. I know Senator Sarbanes already touched on this. You have absolutely no recollection of being brought into a telephone conversation between Mr. Stout and Mr. Nash. Is that correct?

Mr. HARDWICKE. Mr. Stout stated that some Board member got on the phone and thought it might have been me. I don't recollect it but it's possible that I did. I'm not saying that I didn't, but I have no recollection of talking to Bob Nash of the Governor's office.

Mr. KRAVITZ. I just want to read to you an excerpt from your deposition before the Committee because I think it corroborates the testimony that you just gave. And I just want to ask you if it refreshes your memory any further. This is at page 44 of your deposition before this Committee. You were asked:

Question: Did the Governor's office ever identify a specific firm that they wanted to see get a certain amount of the underwriting business?

Answer: No, sir, not to me.

Question: Do you know if they did to anybody?

Answer: Not that I know anything about.

Question: So you never heard that?

Answer: I never heard it, no.

Was that your testimony at your deposition on page 44?

Mr. HARDWICKE. That's what it says, yes.

Mr. KRAVITZ. So would you agree that your testimony is certainly inconsistent with the notion that you were put on the telephone to listen to the conversation that Mr. Stout has testified having had with Mr. Nash?

Mr. HARDWICKE. Will you state that question again?

Mr. KRAVITZ. I'll try to do it a little bit better. Let me just actually sum it up this way. You have no recollection not only of hearing the conversation between Mr. Stout and Mr. Nash but you have no recollection of ever hearing that anyone in the Governor's office sought to influence the awarding of the Housing Authority's bonds. Is that correct?

Mr. HARDWICKE. After Bill Clinton was re-elected for the second time, I had an appointment with him. I said, what are you going to do about Stephens. And he said, "Well, Jack was against me, Whit was for me. Give them a fair shake." That was the end of the conversation.

Mr. KRAVITZ. So your only knowledge of the view of Governor Clinton after 1983 regarding the awarding of bond contracts was that Stephens, Inc. should get its fair share even though it had opposed Governor Clinton?

Mr. HARDWICKE. He said, "Whit was for me, Jack was against me." And they fought him pretty hard, the Stephens group. Whit was kind of out of it back then. I don't mean out of it. He was still the top dog but he was getting older.

Mr. KRAVITZ. Governor Clinton told you that both firms should get their fair share?

Mr. HARDWICKE. That's right. "Give them a fair shake," he said.

Mr. KRAVITZ. Mr. Feuer.

Mr. FEUER. Why don't we pursue this issue of whether or not the Stephens firm got a fair shake? In fact, whether all the local underwriting firms in Arkansas got a fair shake. Let's take a look at the Housing Agency Board Minutes of February 17, 1983. I think you all have those down there at the table.

Mr. Stout, you recall that Mr. Nash called you shortly before a Board meeting?

Mr. STOUT. Yes, sir.

Mr. FEUER. The Board meeting was to decide which underwriters would participate in the Housing Agency's single-family bonds?

Mr. STOUT. Yes, sir.

Mr. FEUER. Is it your recollection that after that phone call, that you or Mr. Hardwicke conveyed what Mr. Nash had told you to the other members of the Board?

Mr. STOUT. I think so, I'm not sure.

Mr. FEUER. Do you recall that the Board then voted to include the Lasater firm as one of the Agency's underwriters?

Mr. STOUT. I think that's correct.

Mr. FEUER. Mr. Stout, I'd like to direct your attention to page 4 of these Board Minutes of February 17th. At the top of the page there, the paragraph that carries over from page 3, the first sentence that begins on page 4 reads:

After allowing time for questions and discussion, Chairman Stout recommended that the Board allow the Housing Subcommittee to have final approval of the composition and breakdown of underwriters in the proposal.

Do you recall that? Do you recall recommending to the Board to allow a Subcommittee to decide which underwriters would participate in the single-family bonds?

Mr. STOUT. I really don't.

Mr. FEUER. You were Chairman of the Housing Agency at that time; is that right?

Mr. STOUT. Yes, sir.

Mr. FEUER. As Chairman of the Agency, you signed the copies of the Agency's Board Minutes; is that right? That's your signature on page 5?

Mr. STOUT. Yes, sir; right before the following meeting.

Mr. FEUER. You have no reason to think that the minutes aren't accurate when they report what happened at the Board meeting?

Mr. STOUT. No.

Mr. FEUER. You should have there minutes of another meeting that same day, a 1-page document, and it reads at the top, Minutes Arkansas Housing Development Agency Subcommittee Meeting.

The second paragraph there reads:

Chairman Stout called the meeting to order and stated that the purpose of the meeting was to discuss a proposed solution to the problems with the current Single-Family Bond Program. After discussion, it was determined that the composition and breakdown of underwriters in this proposal be as directed below. Dabbs Sullivan, Division of G.K. Baum Company and Blyth Eastman Paine Webber—60 percent. T.J. Raney & Sons, Stephens, Inc., Collins, Locke & Lasater Inc.—40 percent (13⅓rd percent each).

Mr. Stout, do you remember this?

Mr. STOUT. Not really. I really don't.

Mr. FEUER. You do not recall chairing a Subcommittee that selected the underwriters that would participate in the Agency's single-family bonds?

Mr. STOUT. No, I don't.

Mr. FEUER. In the first paragraph on that page, the second sentence reads: "The Subcommittee consisted of Chairman Charles Stout, Vice Chairman Mort Hardwicke, and Fred Dacus." Who is Fred Dacus?

Mr. STOUT. He was a realtor from Jonesboro, Arkansas.

Mr. FEUER. He was a member of the Housing Agency Board?

Mr. STOUT. Yes, sir.

Mr. FEUER. Who appointed him to the Board?

Mr. STOUT. I believe Governor White did.

Mr. FEUER. So the Subcommittee that selected the underwriters for the Agency's single-family bonds in February 1983, which included the Lasater firm for the first time, was composed of two appointees of Governor White and one appointee of Governor Clinton. Is that correct?

Mr. STOUT. It looks that way.

Mr. FEUER. Ms. Chandler, do you recall that the Agency was experiencing problems with the single-family bonds that had been underwritten previously at that time?

Ms. CHANDLER. Yes, we were.

Mr. FEUER. Who had been the underwriter of those bonds?

Ms. CHANDLER. E.F. Hutton was the lead and Stephens, Inc. and T.J. Raney were the locals.

Mr. FEUER. Did Mr. Sullivan of the G.K. Baum Company and Paine Webber together come up with a proposal to restructure those bonds that had already been issued?

Ms. CHANDLER. Yes, they did.

Mr. FEUER. Is that why the G.K. Baum Company and the Paine Webber firm were chosen as lead underwriters for the restructured single-family bonds?

Ms. CHANDLER. That's correct.

Mr. FEUER. Were the T.J. Raney & Sons, Stephens, Inc. and the Lasater firm included as local underwriters or co-managers for that issue?

Ms. CHANDLER. Yes, they were.

Mr. FEUER. These minutes state that these three local firms—Raney, Stephens, Inc., and the Lasater firm shared equally in this issue. They each got the same share of those bonds. Is that right?

Ms. CHANDLER. That's correct.

Mr. FEUER. Do you have any reason to think that the Lasater firm received any larger share than is reflected in these minutes?

Ms. CHANDLER. No.

Mr. FEUER. Do you have any reason to think they had a special deal that was different from the underwriters?

Ms. CHANDLER. No.

Mr. FEUER. Do you have any reason to think that they didn't have to find purchasers for the bonds that they were allocated the same as the other underwriters did?

Ms. CHANDLER. No.

Mr. FEUER. What about the other members of the panel? Is anyone aware of the Lasater firm receiving a larger share than the other local firms?

Mr. WRIGHT. No, sir.

Mr. FEUER. As far as the members of the panel are aware, these minutes are correct and the Lasater firm received the same share as the other local firms, the Raney firm and the Stephens firm? Is that right?

VOICES. Yes, sir.

Mr. FEUER. You should also have down at the table the minutes of an August 31, 1983 meeting of the Housing Agency Board.

Ms. CHANDLER. Excuse me, August what?

Mr. FEUER. August 31st. The sixth paragraph reads:

Mr. George Wright, Chairman of the Review & Recommendation Subcommittee, handed Chairman Stout the following recommendations and fee percentages.

This is for a subsequent issue of single-family bonds, I believe.

The following recommendations and fee percentages:

Senior Underwriters are Blyth Eastman Paine Webber—25 percent. Co-Senior are the First Boston Corporation—20 percent; and Prudential-Bache Securities—15 percent. Co-Managers are Collins, Locke & Lasater—10 percent; Dabbs Sullivan, Division of George K. Baum & Company, 10 percent; T.J. Raney & Sons, Inc.—10 percent; and Stephens, Inc.—10 percent. Chairman Stout called for a motion to accept the Subcommittee recommendations. Mr. Tommy Edwards made such a motion; Mr. James Branyan seconded; and the Board approved.

Mr. Stout, you remember this?

Mr. STOUT. No.

Mr. FEUER. Mr. Wright, do you have any reason to believe that the minutes are incorrect and that the Lasater firm received some larger share of the bonds that were being underwritten?

Mr. WRIGHT. No, sir, I believe this is correct.

Mr. FEUER. It is your recollection that all the local firms in Arkansas shared equally when it came to underwriting Housing Agency's bonds?

Mr. WRIGHT. I believe that's correct, sir.

Mr. FEUER. Mr. Hardwicke, you were on the Housing Agency Board in 1983. Did you think at that time it would be a good idea for the Housing Agency to use a greater number of underwriters, more underwriters?

Mr. HARDWICKE. That's always been my feeling that the more participation of local underwriters, the better off we would be, yes.

Mr. FEUER. Why did you have that belief? Why did you think you would be better off?

Mr. HARDWICKE. I figured they could make some money out of it and spend it in Arkansas.

Mr. FEUER. Mr. Wright, do you remember Board members discussing at that time that the Agency should use more local underwriters?

Mr. WRIGHT. Yes, sir, I do.

Mr. FEUER. Why did you think it would be a good idea for the Board to use more local underwriters?

Mr. WRIGHT. We thought it was a good idea to include more local underwriters or as many as we could on the issues to kind of spread the business around.

Mr. FEUER. Ms. Chandler, do you recall the Housing Agency Board members discussing using a greater number of underwriters for the Agency's bond offering?

Ms. CHANDLER. Yes, I do.

Mr. FEUER. What were those discussions?

Ms. CHANDLER. Just that the bidding would be more competitive if we included other bond underwriters.

Mr. FEUER. Did you think it would be a good idea for the Agency to use more bond underwriters?

Ms. CHANDLER. Yes.

Mr. FEUER. Why was that?

Ms. CHANDLER. The same reason. We'd had the same local underwriters for 3 years and the same elite underwriter for 4 years. If underwriters know that they are going to get the next bond issue that we decide to sell, then how competitive are they going to be. So if you include other underwriting firms, you get lower bids.

Mr. FEUER. Which were the lead underwriters and the other underwriters that the Agency had been using for 4 years?

Ms. CHANDLER. E.F. Hutton, Stephens, Inc., and T.J. Raney.

Mr. FEUER. Mr. Epes, you joined the Housing Agency as Executive Director in 1983; is that right?

Mr. EPES. Yes, sir.

Mr. FEUER. Is it your impression that in the course of 1983, the Housing Agency began to use a greater number of underwriters?

Mr. EPES. It's more than an impression, it's a fact, yes, sir.

Mr. FEUER. Why was that?

Mr. EPES. Whenever I began my appointment on there, everyone I talked to about the interest that they had and the involvement of underwriters was that they felt that we needed to involve as many underwriters as possible because we would get better ideas and better pricing on bonds and better ideas about new structures of bonds and keep up with what's going on in the marketplace.

Mr. FEUER. You served at the Housing Agency until it became the Development Finance Authority in 1985; is that right?

Mr. EPES. Yes, sir. And then continued on through 1988, yes, sir.

Mr. FEUER. Through 1988. Did the Development Finance Authority continue to use a greater number of underwriters in their bond offerings?

Mr. EPES. Yes, sir, we did.

Mr. FEUER. Was the Lasater firm the only underwriter that the Agency added to its list of underwriters after 1983?

Mr. EPES. No. There were occasions when we added co-managers for various reasons throughout that period of time. We normally did not select a senior manager in that manner, but for co-managers, it was not a big deal basically because they were not the ones that did most of the work on the financing. The main expertise we asked them to have was the ability to market the bonds itself, and not help us structure and work up the financing and do all of the work in preparation of issuing bonds.

Mr. FEUER. Our time is up, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I am going to refer back to something that we have gone over to some extent that I think needs further evaluation.

Mr. Stout, relative to your deposition where you said this was when Mr. Nash called you to tell you to include Lasater in the underwriting group, and you said it was the first time he ever called you that day that you recall, I gather that's correct?

Mr. STOUT. Yes, sir, I think that's correct.

Senator MURKOWSKI. So it had a lasting impression, obviously, and the question was asked, "Was it your impression that this was a pretty important message?" And you said, "Yes." Then the question was asked, "That's why you and the other Board members decided to put Lasater & Company in underwriting groups with the AHDA bond yields; is that right?" You answered, "Yes, sir."

Now, Mr. Feuer was saying that you weren't threatened or that you weren't forced into putting anything in including Lasater's firm in underwritings, but that was the practical effect of Mr. Nash's request. And when you were asked, "Did you really have a choice?" You responded, "I didn't consider it a choice. He made a suggestion, and I usually go by suggestions when it's in the Governor's office." From that, I would assume that your interpretation was that Mr. Nash had the authority to deliver that message from the Governor's office?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. And you assumed that was the message of course Mr. Nash was carrying from the Governor since it was in the name of the Governor's office?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. There was no doubt about that?

Mr. STOUT. No.

Senator MURKOWSKI. The next question was, "So when the Governor's office says do something, you do it; is that right?" And your response was, "Yes, sir."

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. You indicated here in my presence that you felt uncomfortable about that kind of process but nevertheless you were aware that it was a direct message and it should be carried out; otherwise there would be consequences or the implication of that. Is that correct?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. I am a little concerned with the fact that, at some point in time, you shared that information with Mort Hardwicke and he was on the same call with you, or he was asked to listen to this. Is that correct?

Mr. STOUT. Yes, that's what I recall. I think it was Mort.

Senator MURKOWSKI. You think it was Mort. He was there with you, or your recollection is that he was there with you?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. This was when the call came in?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. In listening, did you have a phone, did you press a button?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. So you had a conference call. Was anybody else present at that time or just the two of you?

Mr. STOUT. I don't recall anybody else being present.

Senator MURKOWSKI. No secretary or anyone else?

Mr. STOUT. No.

Senator MURKOWSKI. Did you converse after the conclusion, after Mort Hardwicke allegedly listened to the call, after you were completed, did you discuss it?

Mr. STOUT. I don't really recall.

Senator MURKOWSKI. You don't recall. Now this was a pretty significant call.

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. It was in effect an order from the Governor. There's no question about the intent of Mr. Nash's message. It was take care of this. I find it extraordinary that Mort Hardwicke wouldn't remember or have any recollection. It might have occurred, Mr. Hardwicke, but you don't know?

Mr. HARDWICKE. No, I don't recollect it. But you're talking about 14 years ago.

Senator MURKOWSKI. Well, yes, but it's pretty significant. We have one witness who recalls sharing a call with you and I gather you have no recollection?

Mr. HARDWICKE. I have no recollection of it.

Senator MURKOWSKI. Yet this was discussed at some point in time among the Board members because this somehow resulted in Mr. Wright suggesting or initiating by a process of introducing an additional underwriter in the form of a motion to the Board. Correct, Mr. Wright? Basically along those lines you saw fit to do this?

Mr. WRIGHT. Yes, sir.

Senator MURKOWSKI. You didn't do it on your own volition?

Mr. WRIGHT. I didn't just pull that out of the blue sky. There had been some discussion about adding more underwriters. I made the motion and the Board voted to pass that.

Senator MURKOWSKI. But you don't recall any minutes of a Board meeting where it was discussed?

Mr. WRIGHT. No, sir, I do not.

Senator MURKOWSKI. We have one, two, three, four members of the Board, five members of the Board here with us, four former members, whatever, three?

You didn't keep minutes of your discussion before a formal action? Did somebody propose or the discussion suggested that? Or that there was a communication from the Governor's office suggesting we add another underwriter?

Mr. WRIGHT. I don't recall any.

Senator MURKOWSKI. I would like to get back, Mr. Wright, to your explanation of just how you came up with this motion because it sounds to me like there's some effort here to not try and remember a process that ordinarily is done by committee action, and it was initiated by you. One member, I believe, you were what, out of the country at the time of that meeting, Mr. Stout?

Mr. STOUT. Yes, sir.

Senator MURKOWSKI. So you remember clearly you were out of the country. Mort Hardwicke you were there?

Mr. HARDWICKE. Probably yes.

Senator MURKOWSKI. You don't recall a Board meeting either?

Mr. HARDWICKE. No, I don't recall it.

Senator MURKOWSKI. But you recall Mr. Wright, vividly, introducing this motion?

Mr. WRIGHT. I recall it by looking at these minutes. It says that I made the motion. I remember there was some discussion about adding more local underwriters to all our issues. I did make the motion. I mean, it's in the record.

Senator MURKOWSKI. According to Mr. Stout's deposition, pages 30 and 31, Mr. Hardwicke casually discussed Mr. Nash's request with each Board member. Is that right?

Mr. HARDWICKE. Repeat that question.

Senator MURKOWSKI. According to Mr. Stout's deposition, Mr. Hardwicke casually discussed Mr. Nash's request with each Board member. Is that right?

Mr. HARDWICKE. I don't recall that.

Senator MURKOWSKI. You don't recall that. I find it hard to believe that you don't remember anything but I suppose those things can happen.

Explain for me, Mr. Stout, the reaction that you had when you received the letter from Stephens indicating their withdrawal of their willingness to underwrite? That must have sent a few waves through the Board and I noted that all the Board members were copied, including Linda Trent and a copy went to then-Governor Bill Clinton. When an underwriter drops off an underwriting, and puts in the letter, with outside interferences by political and other interests as one of their concerns over the actions contemplated by the Arkansas Board, that also suggests you investigate more carefully whether the added company meets the standards of capital and experience.

Then in the last paragraph, it says, "With reluctance, we are withdrawing from this issue. Hopefully, this action will not preclude us"—and so forth. That's a pretty strong message to a Board expressing concern, and you have lost an underwriter here. What was the attitude of the Board relative to this? Was there disappointment? Was there any action? Was it shared that we ought to consider the recommendations of this firm, Stephens, Inc., one of the bigger, better, and larger firms? Mr. Stout, do you have any reflection on what kind of waves this sent to the Board when it came through?

Mr. STOUT. I don't distinctly remember getting this letter. I remember it surprised me, and I think we discussed it with Linda, didn't we?

Ms. CHANDLER. Yes.

Senator MURKOWSKI. I wonder, Ms. Chandler, what was the reaction? You said you discussed it. Maybe you and Mr. Stout can explain what your discussion covered.

Ms. CHANDLER. I knew that the letter was coming and I called Mr. Stout and told him that that was what Stephens was planning to do.

Senator MURKOWSKI. Why did you know it was coming?

Ms. CHANDLER. I was told by a representative from Stephens.

Senator MURKOWSKI. Ms. Chandler, did you communicate that to any other member?

Ms. CHANDLER. No, I did not. I called Charlie Stout and no one else.

Senator MURKOWSKI. Mr. Hardwicke.

Ms. CHANDLER. No, I did not.

Senator MURKOWSKI. Did you communicate that information, Mr. Stout, with any other members of the Board?

Mr. STOUT. Not to my knowledge.

Senator MURKOWSKI. Any explanation as to why you wouldn't?

Mr. STOUT. I think I met with Gene Wilbourn over this letter and we discussed it.

Senator MURKOWSKI. Ms. Chandler, you felt your action was adequate in just mentioning it to Mr. Stout?

Ms. CHANDLER. I didn't just mention it to him. I called him and told him.

Senator MURKOWSKI. Do you recall calling or talking to any other members?

Ms. CHANDLER. I did not.

Senator MURKOWSKI. You have no recollection of that?

Ms. CHANDLER. I did not talk to any other members. I talked to Charles Stout as the the Chairman and that's all.

Senator MURKOWSKI. Isn't it in the ordinary course of events that something of this sort would come to the attention of all the Board since all the Board were copied by this letter?

Ms. CHANDLER. Ask that again, please.

Senator MURKOWSKI. Wouldn't it be anticipated that the other Board members would be advised or that this would be a subject on the agenda for a meeting so that it could be discussed because it is a pretty significant thing. Here is an underwriter that's been around with a good reputation, decides to drop off and leave some interesting innuendoes about political influence dominating a process that an independent board has set up to ensure that those kinds of influences don't persist. But nothing was done.

Ms. CHANDLER. To my knowledge, I was not included in any meetings, but if they are copied, wouldn't you assume they got the copy at the same time as we did?

Senator MURKOWSKI. I would assume so.

Mr. Hardwicke, do you recall getting a copy of this letter?

Mr. HARDWICKE. No, sir.

Senator MURKOWSKI. You do not recall?

Mr. HARDWICKE. No, sir.

Senator MURKOWSKI. Even though you could have got the copy and just not had a recollection of it?

Mr. HARDWICKE. Yes, sir.

Senator MURKOWSKI. Mr. Wright.

Mr. WRIGHT. I remember them resigning off of the issue but as far as getting that specific letter, I'm sure I did if it was carbon copied to me.

Senator MURKOWSKI. Now just one more time, Mr. Wright. If you would take me through the process that caused you to initiate your recommendation that the Board take action to include the Lasater firm?

Mr. WRIGHT. I made the motion to the Board.

Senator MURKOWSKI. But let's go back. Was it on the agenda?

Mr. WRIGHT. No, sir. In the end, I don't know that it has to be on the agenda.

Senator MURKOWSKI. Well, it probably doesn't, but oftentimes those are on approved agendas, but this particular time, as far as you know, it wasn't. You made the motion. What caused you to make the motion?

Mr. WRIGHT. I believe that the Board members had discussed a desire to increase the number of local underwriters on our issues.

The CHAIRMAN. Mr. Wright, let me ask you something, if I might. Wouldn't it be more accurate to suggest that the Board members had discussed not just adding more local members but adding the firm of Collins, Locke & Lasater?

Mr. WRIGHT. That very well could be, sir.

The CHAIRMAN. You see—

Mr. WRIGHT. That's a local firm, sir.

The CHAIRMAN. I understand that, but it wasn't a generic thing. It wasn't that we're going to add all of the local firms. Here you had a call. And you don't doubt Mr. Stout's veracity, do you, Mr. Wright? You worked with Mr. Stout for a number of years on that Board, didn't you?

Mr. WRIGHT. A few years.

The CHAIRMAN. You don't doubt him as a man of integrity and veracity, his truthfulness, do you?

Mr. WRIGHT. I'm not doubting that.

The CHAIRMAN. So when he recounts to the Board that he got a call from the Governor's office and he put his friend Mort on the phone, and then you discussed this, it didn't just drop in out of the air, as you said before. You added the firm of Collins, Locke & Lasater because that was what had come down. The Board members didn't just dream this up themselves, hey, we want to add extra members. You got a call with respect to this firm.

Mr. WRIGHT. There again, I am not for sure when it came, whether it came, what the date was.

The CHAIRMAN. Ms. Chandler, you've been there before. This has never happened where you added somebody after the initial award; is that correct?

Ms. CHANDLER. That's correct.

The CHAIRMAN. Mr. Stout, with specificity, you got the request to give them 15 percent. Is that correct?

Mr. STOUT. Yes, sir.

The CHAIRMAN. You remember this. By the way, I understand how it is that no one could remember a specific meeting on August 31st or on July 7th, or whenever it is. Who could remember a specific meeting? But you remember incidences of some significance. Isn't that correct? You wouldn't remember the date but you'd remember, yes, at this time, I got a call from the Governor's office. Isn't that why you remember that, Mr. Stout?

Mr. STOUT. Yes, sir.

The CHAIRMAN. Because you never really did get calls from the Governor's office heretofore as it related to picking a particular firm. Is that correct?

Mr. STOUT. Yes, sir.

The CHAIRMAN. That's why it made an impression.

Mr. STOUT. Yes, sir.

The CHAIRMAN. Otherwise, you would not have remembered, would you?

Mr. STOUT. No, sir.

The CHAIRMAN. You don't remember any of those meetings really in actuality. If you see a thing that says you were at a meeting and you made a motion, you will say, well, if it says I was there and I made a motion, then I wouldn't dispute it; correct?

Mr. STOUT. Yes, sir.

The CHAIRMAN. Isn't that the way you are all really testifying?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You can't remember with actual specificity. One more time, Mr. Hardwicke, you have known Mr. Stout, and you have worked with him for a number of years. There was something about—I'll come back to you.

Senator MURKOWSKI. Let me just make a chronology very briefly because I think it'll help where we are, and I won't be more than 1 minute.

The CHAIRMAN. I don't believe that.

Senator MURKOWSKI. Well, try me.

[Laughter.]

On February 17th, Nash calls Mr. Stout. February 17th, Lasater is included. April 12th, the underwriters were chosen for another issue. Lasater loses the bid. April 19th, Lasater added by the back door on a motion by Mr. Wright. April 28th, Stephens, Inc. pulls out in outrage, a Little Rock firm. Then the consequences of Nash's call on behalf, at the direction of the Governor results in Lasater getting a 13 percent portion guaranteed, which was not something that didn't happen. That really happened. That was an actuality.

So the sequence of events from the Governor ordering it to be done to the consequences are evident, and as far as influence peddling is concerned, this is a classic case.

The CHAIRMAN. Let me, if I might, and the red light is on, but I think we can wrap this up, and I will yield obviously to Senator Sarbanes, so he can make his observations or ask any questions before we wrap this up. A lot has been made about who appointed you, who didn't appoint you, what happened, you'd lose your job. I mean, you didn't get paid for any of this, did you? Mr. Hardwicke, you didn't get paid?

Mr. HARDWICKE. No, sir.

The CHAIRMAN. This was an honor, it was a responsibility but you didn't get paid anything, did you?

Mr. HARDWICKE. Never.

The CHAIRMAN. Mr. Wright.

Mr. WRIGHT. No, sir.

The CHAIRMAN. Mr. Stout.

Mr. STOUT. No, sir.

The CHAIRMAN. So your positions were such that you gave of your own time to your community and to your State, and obviously there was a recognition as it accorded you some stature in the community; is that right?

Mr. STOUT. Yes, sir.

The CHAIRMAN. So it isn't a question that you were going to lose a job if you do or if you don't do. You were appointed by Governor White; is that correct?

Mr. STOUT. Right.

The CHAIRMAN. But you had a sense and an obligation to whoever the next Governor was; is that correct?

Mr. STOUT. Yes, sir.

The CHAIRMAN. Is that why you eventually went along? You were not happy but you went along? You felt it was coming from the Governor's office; right?

Mr. STOUT. Yes, sir.

The CHAIRMAN. Is that a fair interpretation?

Mr. STOUT. Yes, sir.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Ms. Chandler, when did you become the Executive Director, first the Acting Executive Director?

Ms. CHANDLER. I think it was the early part of 1983.

Senator SARBANES. 1983?

Ms. CHANDLER. Correct.

Senator SARBANES. When did you become the Director?

Ms. CHANDLER. A couple months after that.

Senator SARBANES. You went to see Governor Clinton about becoming Director; is that correct?

Ms. CHANDLER. I did.

Senator SARBANES. It was an appointment by him to be made by him or by the Board or what?

Ms. CHANDLER. No, it was not. The Executive Director's position was hired by the Board of Directors, but as a courtesy, they would always run the name by the Governor's office.

Senator SARBANES. What did you indicate to the Governor when you went to see him?

Ms. CHANDLER. I'm sorry, I didn't hear the question.

Senator SARBANES. What did you indicate to the Governor when you sent to see him? That was Governor Clinton; right?

Ms. CHANDLER. Clinton. I indicated to him my qualifications for the position in the hope that the Board of Directors did run my name by him, he would know who I was and that I was capable of handling that position.

Senator SARBANES. What did he say to you?

Ms. CHANDLER. He thanked me for coming over and shook my hand, and I did not have any indication when I left the office whether or not this would happen. I didn't know if I would become the Executive Director or not.

Senator SARBANES. Did you tell him you had run the Agency in a very business like fashion without any favoritism on a straight merit basis?

Ms. CHANDLER. Yes, I did.

Senator SARBANES. Then you were named a couple of weeks thereafter to become the Executive Director?

Ms. CHANDLER. That's correct.

Senator SARBANES. Then when did you step down as Executive Director?

Ms. CHANDLER. I believe I left the Agency in June or July 1983.

Senator SARBANES. Why did you do that?

Ms. CHANDLER. I was offered a position with Lomas & Nettleton Mortgage Company.

Senator SARBANES. A more attractive position I take it?

Ms. CHANDLER. I think it was to me.

Senator SARBANES. Is that when you came in, Mr. Epes?

Mr. EPES. Yes. I think there was an interim period. Mr. C. E. Anderson, I believe, served as Acting Director for some period of time. And I began work on the 15th of September, 1983, yes, sir.

Senator SARBANES. Mr. Stout, Chairman D'Amato said that you recounted to the Board this phone call that you had with Bob

Nash. But as I understood your testimony earlier, you didn't recount it to the Board. Is that correct?

Mr. STOUT. Would you repeat the question?

Senator SARBANES. Chairman D'Amato said that you had recounted the phone call from Nash to the Board, and I understood your testimony earlier to be that you had not told them.

Mr. STOUT. I don't think I did. I don't think I recounted it to the Board members.

Senator SARBANES. You didn't tell anyone about it; is that right?

Mr. STOUT. I don't recall.

Senator SARBANES. Now did you say earlier you're from Conway?

Mr. STOUT. Yes, sir.

Senator SARBANES. Is Judge Johnson from Conway, the former member of the Arkansas Supreme Court?

Mr. STOUT. Yes, sir.

Senator SARBANES. Do you know one another?

Mr. STOUT. Vaguely.

Senator SARBANES. Mr. Hardwicke, you don't recollect being put on the phone and listening in on the conversation that Mr. Stout reported with Mr. Nash; is that correct?

Mr. HARDWICKE. I don't recall it. I don't doubt Mr. Stout's word but I do not recall.

Senator SARBANES. You don't have any independent recollection of it?

Mr. HARDWICKE. No, sir.

Senator SARBANES. Do you recall his statement that you then went around and talked to the other Board members? Is that your statement, Mr. Stout, that he went around and talked to the other Board members?

Mr. STOUT. Probably.

The CHAIRMAN. Senator, I'm going to ask that we give to Mr. Stout, and ask one of our people to refer him to page 30 where his testimony starts. This is the deposition that you gave. Would somebody assist him please? I want to make sure that he has it and it's pointed out to him. The bottom of the page where the whole question came up, page 30, where it's Mr. O'Callaghan and Mr. Stout, and then it goes: "OK, Mr. Stout, after you approached each of the Board members about including Lasater's firm in the offer, didn't you have any further conversation?"

Senator SARBANES. Mr. Chairman, let me finish my question.

The CHAIRMAN. Let him take a look at his deposition. We want to be fair. Let him go over it. We have done that with all of the witnesses, so that they can go over it. And I will insist upon that so that he can go through it, instead of people indicating what he said or what he didn't say. Let him read it over because it can get confusing.

Senator SARBANES. Mr. Stout, once you have had a chance to, in effect, educate yourself from your deposition, I'll come back with some questions. The Chairman is very anxious that you do that obviously before we have a question and answer, instead of depending on your recollection here today at this hearing.

The CHAIRMAN. I suggest that you read that starting at the bottom of line 12, "After you approached each of the Board members

about including Lasater's firm, did you have any further conversations on any other subject?"

I want you to see what you said there. "I don't think so. Mort was Vice Chairman. I think I approached him or them. I think he approached them. I don't think I approached them. I don't remember." Read what you go on to say for the next 7 or 8 lines on the next page.

Senator SARBANES. OK, Mr. Stout. How did it happen?

[Laughter.]

The CHAIRMAN. If I were you, I'd read it right back.

Mr. STOUT. Just like it's written.

Senator SARBANES. How is that, because it's written in a lot of different ways here. Some of it isn't consistent with some of the rest of it. Why don't you just tell us how it happened?

Mr. STOUT. Just like it's written.

Senator SARBANES. Which means what?

Mr. STOUT. You tell me.

Senator SARBANES. Did you tell Mr. Hardwicke about it?

Mr. STOUT. Just like it's written.

Senator SARBANES. That's not an answer, Mr. Chairman.

The CHAIRMAN. Senator, I think if we go through it with him.

Senator SARBANES. He has the deposition in front of him, let him answer the question. Did you tell Mr. Hardwicke or not?

The CHAIRMAN. Did you tell Mr. Hardwicke about it?

Mr. STOUT. Sure I told him about it.

The CHAIRMAN. Was it your impression that he advised—

Senator SARBANES. It's my time. Did you tell other members of the Board about it?

Mr. STOUT. No, sir.

Senator SARBANES. You didn't tell any of the other members?

Mr. STOUT. Not to my memory, I didn't.

Senator SARBANES. Is it your testimony that Mr. Hardwicke went around and told all the other members?

Mr. STOUT. It's my recollection that he did.

Senator SARBANES. That he then went and told all the other members?

Mr. STOUT. Yes, sir.

Senator SARBANES. Is that your recollection, Mr. Hardwicke?

Mr. HARDWICKE. Sir, speak a little louder.

Senator SARBANES. Is that your recollection? Mr. Stout is telling us that you went around and told all the other members? Do you recall that?

Mr. HARDWICKE. No, sir, I do not.

The CHAIRMAN. Could it have been the case, not that you don't remember?

Mr. HARDWICKE. Yes, it's possible certainly. We are talking about 13, 14 years ago.

The CHAIRMAN. When Mr. Stout says that he advised you, and it was his impression that you advised the other members because Mr. Wright did make the eventual motion, you would have no reason not to believe that to be the case, do you?

Mr. HARDWICKE. No, I don't.

Senator SARBANES. Mr. Wright, do you recall being told this at this February meeting?

Mr. WRIGHT. I just recall in general terms that we had conversations about adding additional ones and, as the Chairman says, this particular one. And I made the motion.

Senator SARBANES. No, that was at a later meeting. I want to separate out these two meetings because these two meetings get continually confused here today.

There was one meeting in February, there was a later meeting in April. The questioning has come along as though the two meetings are one meeting, and we have to separate out the two meetings. The April meeting is the one where Lasater was added to, as I understand it, an already existing proposition. The February meeting, that dealt with an entirely different bond issue, as I understand it. Is that correct, Ms. Chandler?

Ms. CHANDLER. Yes.

Senator SARBANES. The February meeting dealt with an entirely different bond issue than the April meeting. Is that correct?

Ms. CHANDLER. That's correct.

Senator SARBANES. What did the February meeting deal with?

Ms. CHANDLER. Single-family housing issue.

Senator SARBANES. What did the April meeting deal with?

Ms. CHANDLER. The multifamily housing.

Senator SARBANES. In the February meeting, Mr. Wright, do you recall Mr. Hardwicke coming around and telling you about this phone call from the Governor's office?

Mr. WRIGHT. Specifically, no, sir. I don't recall him coming and talking to me about it.

Senator SARBANES. Pardon?

Mr. WRIGHT. I do not recall Mr. Hardwicke coming and talking to me about that specifically.

Senator SARBANES. So you don't remember?

Mr. WRIGHT. I don't recall, no, sir.

Senator SARBANES. And you don't recall, Mr. Hardwicke?

Mr. HARDWICKE. No, sir. I saw a document this morning that indicated that Lasater & Company had only received 1 percent of the bond proceeds business and that the Arkansas Finance and Development—

Senator SARBANES. I don't think we had a document like that.

Mr. HARDWICKE. I read it somewhere this morning.

Senator SARBANES. The percentage was higher than that.

Mr. HARDWICKE. Over the period of years, up until I guess the Arkansas Finance and Development Authority, after they changed the name of it, their percent of the business was 1 percent.

Senator SARBANES. You mean through Frank White's term?

Mr. HARDWICKE. From the time of the inception of the Agency until I guess right now. I don't know whether they are doing business with Arkansas Finance and Development, or not.

Senator SARBANES. I don't know. Isn't it the case that this bond business, before Governor Clinton's second term, was very tightly controlled in Arkansas, and went to only a couple of local firms? Is that the case?

Mr. HARDWICKE. Correct.

Senator SARBANES. The Governor made it clear that he wanted to open it up and include additional bond houses; is that correct?

Mr. HARDWICKE. I suppose that's correct. I don't know. He never mentioned it to me but he may have to somebody. I always had the feeling it needed to be spread around.

Senator SARBANES. I think Betsey Wright testified here that they wanted more competition. In fact, Ms. Chandler, you indicated it was a very non-competitive situation since the work was going to a small number of houses over and over again. Is that correct?

Ms. CHANDLER. That's correct.

Senator SARBANES. So the inclusion of more houses would increase the competition and might well lead to a better deal for the State. Would that be correct?

Ms. CHANDLER. That would be correct.

Senator SARBANES. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

I just wanted to clarify one point. It was stated during the Majority's time, Mr. Stout, that the call you received was the Governor ordering the Housing Authority Board to do something, and I just wanted to make sure that your testimony is clear on that point.

You testified earlier that at least as far as you can recall your conversation with Mr. Nash back in 1983, there was no mention of Mr. Clinton's name during that conversation; correct?

Mr. STOUT. That's correct.

Mr. KRAVITZ. You, to the extent you can remember this conversation at all, viewed it as a call from Mr. Nash, not from the Governor; correct?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. Just one other point. You testified, when I was asking you questions before, and you also testified at your deposition last night at page 78, that you understood that there would be no consequences, nothing would happen to you or to the Board if you rejected the suggestion of Bob Nash as far as you recall it; is that correct?

Mr. STOUT. Yes, sir.

Mr. KRAVITZ. Thank you.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. We just did an analysis of a document that I believe Mr. Epes may have prepared bearing Bates Number DKSND 26126 through 26128. It is bond issues between 1983 and 1986. These are the ones when Mr. Lasater first got involved with that first single-family issue, and there were 15 issues between 1983 and 1986 involving single- or multifamily housing. Lasater was included in 14 of the issues. George Baum in 15, T.J. Raney in 14, Stephens in 9, Paine Webber in 9, Merrill Lynch in 5, and Pru Bache in 2, First Boston in 2.

The CHAIRMAN. OK. I want to thank all of the witnesses. It is not easy to attempt to recall. I believe all of the witnesses testified as truthfully as they possibly could given the circumstances. You cannot recall with particularity an exact meeting at an exact time or when you made a motion for something. And I don't think any of this is easy on those of you, particularly the people who served on Boards and now find themselves dragged in through no consequences of their own actions.

So I thank you for taking the time and for the imposition and the difficulties that you are having to be here and give depositions

required. We are deeply appreciative of the fact that you have tried to do the best that you can in reconstructing the events that took place 13-plus years ago.

So you have the thanks of the Committee.

We stand in recess until next Tuesday.

[Whereupon, at 4:10 p.m., the Committee was recessed, to reconvene on Tuesday, May 7, 1996, at a time specified.]

[Appendix supplied for the record follows:]

Memo to File

David Collins Inv.

October 14, 1986

Michael Jerome Drake is willing to give a statement about his use and distribution of cocaine.

He went to work for Collins, Locke, & Lasater in the middle of September in 1982 and left the firm in the fall of 1983. He left because of the availability of cocaine and also the bad reputation the Collins, Locke, & Lasater firm had with the abuse of cocaine in the community. Prior to going to work for the firm he told David Collins about the bad reputation Collins, Locke, & Lasater had for its cocaine abuse and David Collins said, "This firm is cocaine free and we just fired a man for cocaine use".

The first time he remembers snorting cocaine was at Tommy Tullies' house, located on Evergreen in Little Rock, Arkansas. After he went to work for Collins, Locke, & Lasater he saw both Tommy Tullies and George Locke in possession of a two-gram vial of cocaine each. He can't remember whether Tommy Tullies or George Locke gave him some cocaine but he took 1 or 2 bumps of the cocaine that was offered to him at this same party. He also saw Walter West, David Collins, and Paula Collins in possession of cocaine.

The next time he remembers using cocaine was at the Collins, Locke & Lasater Christmas party, held at the Capitol Club on December 11, 1982. When he walked into the classroom at the Capitol Club he saw both Dan Lasater and George Locke in possession of a two-gram vial of cocaine. He received several bumps of the cocaine from both men.

According to Drake Chuck Berry came to work for Dan Lasater in the spring of 1983. Shortly afterwards Chuck started supplying cocaine to anyone who wanted it.

Drake stated that in the fall of 1983 he started using cocaine on a daily basis. His sources of cocaine during this time period were Chuck Berry and Herbie Douglas.

It became obvious to him that Dan Lasater was using cocaine as a tool to manipulate his peers and force them to serve as a buffer between the authorities and his cocaine abuse. The people that Michael Drake noticed that Dan Lasater used as buffers were George Locke, Tommy Tullies, Jay DeHaven, Tommy Carter, Chuck Berry and himself. Lasater also considered these people loyal to him because he used cocaine to control them for his benefit. Drake also noticed Dan Lasater using George Locke, Clarence Strahan, Jay DeHaven, and Chuck Berry to carry his cocaine for him. Dan Lasater discussed on several occasions with

Michael Drake about the decision to surround himself with police officers in order to make himself look like he is a good citizen. Another way he used to project this image was getting his wife, Linda, and himself involved in community projects, such as the Florence Crittenden Home Services for unwed mothers and the Arthritis Foundation. Drake said it was a joke around the office that Dan was instrumental in putting several of the young unwed mothers in Florence Crittenden Home. In 1984 Jim Alexander, Chuck Berry, Patsy Thomas, and Dan Lasater flew in Dan's jet to Belize, Honduras to allegedly buy a cattle ranch. Michael Drake says he later heard around the office that it was also a trip to buy cocaine. Jim Alexander is a farmer from Scott, Arkansas and is in business with Clarois Crisp. They formed a company called "Laser Systems". He has since found out that Jim Alexander is a follower of Soldier of Fortune magazine. On this particular trip Lasater was having trouble purchasing land in Honduras. The main problem in the transaction was the Honduras Land Commissioner. Drake was told that while the above mentioned people were having dinner with the United States Ambassador to Honduras, Jim Alexander allegedly made the statement, "Why don't we take the Land Commissioner out". He understood this statement by Jim Alexander to mean "Why don't we kill the Land Commissioner".

Michael Drake bought cocaine or marijuana from the following people:

1. Chuck Berry, a minimum of 11 times from the first part to the latter part of 1984. Each of the purchases would range from 1 to 2 grams of cocaine at a time.
2. Berole Douglas, a minimum of 12 times from the fall of 1984 until the spring of 1985. Each of the purchases were one gram at a time.
3. Nathan Calhoun, from 3 to 3 times. Each of the purchases were one ounce of marijuana at a time. All of the above mentioned purchases were all done in the fall of 1984. Drake and Calhoun also did cocaine together 3 to 4 times around this same time span.
4. Bucky Clayton, more than 12 times in 1 to 6-gram purchases of cocaine at a time. The purchases were from November of 1984 to the winter of 1985. Drake remembers one of the purchases was done on the day prior to the opening day of duck season in 1985. This 2-gram purchase was made on Friday, November 22, 1985. Lynn Kemper and Drake would split the purchases of cocaine most of the time. Lynn Kemper made 3 or 6 purchases around the same time from Bucky Clayton and he and Drake split these purchases.
5. Dan Lasater gave Drake 2 grams of cocaine around Christmas of 1983. A few days later Drake wrote Dan Lasater a

check for \$133 for the two grams of cocaine. The note in the left bottom corner of the check "Loan".

Dan Lasater bragged to Drake that Larry Rosenfield was a man who was bringing large quantities of cocaine from Aspen to Arkansas. Larry Rosenfield and Drake did cocaine together on 3 or 4 different occasions. In the early summer of 1983 Larry Rosenfield approached Drake about buying 1/2 pound of cocaine from him. Drake told him that he was crazy and told him he wasn't interested.

Tommy Carter and Drake were returning to Little Rock after Frank Broyles was inducted into the Sports Hall of Fame when they ran into Chuck Berry at the Atlanta Airport. The date was around December 6, 1983. When they got to the airport in Little Rock, Arkansas Chuck Berry asked Tommy Carter and Drake if they wanted some good cocaine. They followed Chuck Berry to his van where he took his money belt off and produced 4 clear plastic bags of cocaine. Chuck Berry had enough cocaine to fill approximately 4 coffee cups. Chuck got his cocaine grinder out and ground them some cocaine up to a snort. All three did several bumps of Chuck Berry's cocaine.

On Derry Day of 1984, Drake saw Reggie Taylor selling cocaine in the men's restroom at the Arlington Hotel in Hot Springs, Arkansas. This date was April 21, 1984. Prior to entering the bathroom Drake heard from a source that Reggie was selling the cocaine in the bathroom. When he entered the door he saw Reggie Taylor handing a folded piece of paper to an individual and the individual handed Reggie Taylor some money. Taylor told Drake he had 7 or 8 grams of cocaine left. For \$100 a gram. Drake told him he wasn't interested in any of his cocaine. Reggie and Drake have done cocaine together on 7 or 8 different occasions.

Drake remembers on Derry Day of 1983 after eating dinner at the Captain's Walk in Hot Springs Dan Lasater asked him if he wanted some cocaine. As they were walking out the door Dan Lasater instructed Chuck Berry to give Drake 2 grams of cocaine.

David Collins provided Drake with cocaine on 4 or 5 different occasions. On each of these occasions they did 2 or 3 bumps of cocaine together. On one of the occasions mentioned above they were at David Collins' Christmas party which was held at his house. The party was held on the twenty-first of December, 1984. David Collins provided Drake with several bumps of cocaine while they were in the upstairs bedroom. Other people Drake remembers being in the bedroom were Tommy Tilles, Bill Martindale, Paula Collins, Tommy Carter, Lynn Kempner, and Jay DeEaven.

Drake also heard around the office that the Governor of New Mexico, who is Tony Anaya, is to get a job running Angel Fire when he leaves office. It was stated that Tony Anaya put an airstrip at Angel Fire at no expense to Dan Lasater.

Drake remembers when the Governor of Kentucky, who was John Y. Brown, was having an investigation conducted on him by the IRS and Justice Department, in 1963 when monies were missing from his accounts. During this time Dan Lasater came by Drake and said, "I just took care of John Y's money problems".

Dan Lasater used the term "putting one in the boot", when he was referring to fixing horse races. Dan told Drake about the time that John Fernung, who was Lasater's trainer, paid the judges off on a photo finish. Lasater stated that the judge tore the photo finish up in order that Lasater's horse could win the race. Lasater also talked about his trips to Las Vegas where he would gamble at the dice tables. Lasater would use the term "wasting money". Lasater would reportedly lose the money and later win the money back, plus more.

Drake was present when Billy McCord purchased two grams of cocaine from the Boat Captain of the Bar Vail in 1984 at Ft. Lauderdale, Florida.

Drake snorted cocaine with Teresa Davis on 7 or 8 different occasions. Some of the time he would provide it and some of the time she would provide it. One of the times Drake remembers being sitting with Teresa Davis was at the Lasater and company birthday party held at the Whispering Pines Country Club in southwest Little Rock in the fall of 1984.

Lasater & Company

INVESTMENT BANKERS

February 15, 1983

The Honorable
 Bill Clinton
 Governor
 State Capitol
 Little Rock, AR 72201

Dear Governor:

Thank you very much for the opportunity to sit down and visit with you regarding the many issues facing Arkansas and relative to areas in which Lasater & Company can assist you in your efforts to promote and develop Arkansas.

In order to maximize our relationship, I believe that it is essential that we take some positive steps to set up specific lines of communication to enable both our understanding and to make sure that those lines are kept open and functioning.

To begin, let me suggest that Lasater & Company be advised of all financial proposals affecting the state of Arkansas and suggest that your chief person in our company on matters in order is Joe Morfoglio, Michael Drake and Dan Houdy.

Secondly, we have discussed the appointment of Donnie Spears to the Arkansas Housing Board and I have confirmed our understanding regarding the appointment in my letter of January 23, 1983, and I want to again reaffirm our interest and desire in seeing Mr. Spears in this position.

Next, let me suggest that we believe it would be in your best interest to send a representative of your staff to each Arkansas Housing and Development study meeting which usually precedes the regular meeting of the agency. Normally, the study meeting occurs on the third Wednesday of each month.

Fourth, we would recommend to you that competitive proposals be required on the up-coming AHDA FHA/VA financing to permit Hutton to submit a proposal. It is important for us to know that because ~~we have made commitments to Hutton and unless competitive proposals are accepted, it would leave us, Lasater & Company, in an untenable position.~~

DKSN027:

312 Louisiana Street • Little Rock, Arkansas 72201 • 501-376-0069
 National Wire: 1-800-643-6072 • Arkansas Wire: 1-800-482-6496
 261 Corporate Plaza, Pensacola, D • 110 E. Bayview Blvd. • Ft. Lauderdale, Florida 33301 • 305-467-1088
 National Wire: 1-800-327-6111 • Florida Wire: 1-560-432-9711
 1400 Highway 90 • Gulfport, Mississippi 39503 • 601-833-1111

Governor Clinton
 February 11, 1935
 Page 2

Dan Maudy, who is very familiar with state government and who serves on the Constitutional Convention is a lobbyist and he is available on strategy or any other matters in which you believe his input would be effective. Let me encourage you to call on Dan; his experience and knowledge is valuable.

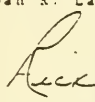
In addition, we would be more comfortable if you would take the opportunity or ask someone on your staff to take the opportunity to appraise me or my staff of any actions by you or your staff prior to any public announcements so that we will not be surprised or in some instances embarrassed because of the announcement.

Finally, I believe it would serve us both well to have regular monthly meetings between the two of us to discuss the affairs of the economy on Arkansas. I do not ask for this to have undue influence or to try to bring undue pressure to you or your Administration but because of my background in business I believe that I can make a positive contribution to your efforts to produce a better climate in the state of Arkansas.

Again, thank you for the opportunity to sit down and discuss with you these points and I hope you will act favorably on my suggestion for a regular meeting.

Sincerely,


 Dan A. Lasater


 Rick L. Knox
 President

DKSN027

FEDERAL BUREAU OF INVESTIGATION

1

10/21/86

Date of transcription

DANNY RAY LASATER, #4 Edgehill, Little Rock, Arkansas, was interviewed at the RIVERFRONT HILTON MOTEL, North Little Rock, Arkansas, by EUGENE L. CROUCH, who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI). Also present during the interview were Detective TOM JAMES, Little Rock Police Department; Mr. GEORGE W. PROCTOR, United States Attorney, Eastern District of Arkansas, Little Rock, Arkansas; and Messieurs BILL WILSON and DICK MOORE, attorneys representing Mr. LASATER.

Prior to any questioning, Mr. LASATER was advised that he was to be questioned concerning his involvement in the distribution of cocaine as well as all illegal activities regarding associates and business transactions. Mr. LASATER was interviewed under an agreement of use immunity granted by the United States Attorney's Office, Eastern District of Arkansas, Little Rock, Arkansas.

Mr. LASATER provided the following information:

Mr. LASATER stated that he was born in Letona, White County, Arkansas, and at the age of 11 moved to Kokomo, Indiana, the year being 1954. He attended Taylor Township Elementary and Junior High Schools and graduated from Sharpville, Indiana, High School. One of his earliest employments was with the MC DONALD'S Restaurant chain. After a short while, he was promoted to assistant manager for MC DONALD'S, which position he maintained for eight or nine months. At the age of 19, he was promoted to manager after JOHN CRUM, the manager at the time, left the restaurant to open his own chain of eating establishments in Frankfort, Indiana, under the name of "BIG MAC'S." He remained manager for approximately two years, having established the business as a very profitable operation.

On December 2, 1962, he; NORM WEASEY (phonetic), owner of the local Oldsmobile car dealership; and GEORGE TEX SCOTT, father-in-law and former Howard County, Indiana,

FBI-00003569

Investigation on 10/14/86 at North Little Rock, Arkansas File # LR 245F-2-542-21
by SA EUGENE L. CROUCH/meh Date dictated 10/17/86

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 22 1986	

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER, On 10/14/86, Page 2

Sheriff, formed a partnership in establishing a fast food restaurant by the name of SCOTTY'S. After approximately six to nine months, Mr. LASATER advised that he was responsible for changing a marketing concept which enabled the business to prosper financially. As a result, he opened three more SCOTTY'S Restaurants within the Kokomo, Indiana, area.

Sometime during the early 1960's, he and his wife at the time, along with his business partner, NORM WEASEY (phonetic), traveled to Fort Lauderdale, Florida, to familiarize themselves with a steak house operating under the name of the BLACK ANGUS. Utilizing a similar concept as a BLACK ANGUS Restaurant, he and his partners opened a steak house under the name of the PONDEROSA on December 28, 1965. He advised that this time period was about the same as the time that the BONANZA chain of steak houses opened in the Dallas, Texas, area. He stated that the PONDEROSA Restaurant in Kokomo, Indiana, was very successful, and as a result it led him to open an additional eight or ten restaurants in surrounding states. His partners at the time were CHARLES KLEPTZ, Dayton, Ohio, and NORM WEASEY, whom he believes presently resides in Coral Gables, Florida.

In 1968, 48% of the stock was sold to two men from Ohio by the names of JAMES KIRSH and JACK RAUSHMAN (phonetic). In 1969, the PONDEROSA Company went public and offered seven shares of stock in the company to anyone who loaned \$1,000 to the company. KIRSH and RAUSHMAN (phonetic) used their income to purchase property and to construct the actual PONDEROSA buildings. As a result, there was very little profit during this period of time, and he eventually bought both individuals out and "ran them off."

He then employed an individual by the name of GERALD OFFICE, JR., a young attorney who had the responsibility of taking care of the financial and marketing end of the business, who did an excellent job. In June 1972, Mr. LASATER estimated that his stock in the PONDEROSA Restaurant was worth \$20 million, and at that time he sold approximately \$10 million worth of the company but ended up with approximately \$15 million at the conclusion of the sale.

FBI-00003570

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER , On 10/14/86 , Page 3

In the latter part of this business venture, he became interested in the thoroughbred racing horse business and entered into a venture with JOHN FERNUNG with an investment of \$1,500. He and FERNUNG purchased a yearling for \$3,000 that turned out to be a good horse that made quite a bit of money. More of his time was devoted to developing thoroughbred racing horse stables, with DAVID VANCE becoming his trainer. Mr. LASATER stated that he was very successful in the thoroughbred racing horse business and made many visits at the time to the OAKLAWN RACE TRACK in Hot Springs, Arkansas. In 1972, he and his stables stayed at the OAKLAWN RACE TRACK, Hot Springs, Arkansas, the entire season.

In 1974, 1975, and 1976, his stables were the leading money stables in the world and as a result were the recipient of the Eclipse Award.

In 1977 and 1978, he began to lose interest in the racing aspect of the thoroughbred horse business and cut back to one stable, which was operated by DAVID VANCE. His first stables were housed in Goshen, Kentucky, in 1972, and in 1976 he bought a 1,400-acre ranch in Ocala, Florida, and started raising brood mares, entering into the breeding aspect of the thoroughbred horse business. His business prospered, and he made the top ten list of breeders in the United States.

In 1975 or 1976, he became acquainted with GEORGE LOCKE during his visit to the OAKLAWN RACE TRACK in Hot Springs, Arkansas. He eventually moved to the Little Rock, Arkansas, area in 1978 or 1979.

In August 1983, he made a decision to get out of the horse breeding business after an unsuccessful horse sale in Saratoga, New York.

His initial reason to move to the Little Rock, Arkansas, area was to open a chain of restaurants under the name of ANDY'S OF AMERICA, which was patterned after the WENDY'S chain. He advised that the ANDY'S concept was not completely successful, and in 1981, he sold the ANDY'S Restaurants to GARLAND STREET, who turned the business around, making it a successful operation today.

FBI-00003571

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86

Page 4

In January 1980, he became associated with DAVID COLLINS, a friend of GEORGE LOCKE who resided in Memphis, Tennessee, and at the time worked for a bond company in Memphis by the name of UMIC.

Through DAVID COLLINS' experience, assurance, and insistence, a decision was made to form a bond and security business under the name of COLLINS, LOCKE, AND LASATER. The initial investment was \$68,000 each invested by COLLINS, LOCKE, and LASATER. Because they had no securities license, the business initially operated in the trade of equities until August 1980 when they established FIRST BANKERS CORPORATION in order to get their license.

JOHN SELIG, Attorney, was instrumental in acquiring a securities license from both the Securities Exchange Commission and the state of Arkansas.

Prior to this event, COLLINS, LOCKE, and LASATER COMPANY was dissolved, and the remaining \$25,000 was put into the establishment of the FIRST BANKERS CORPORATION. Soon after, FIRST BANKERS CORPORATION (FBC) was changed back to COLLINS, LOCKE, AND LASATER. Additional working capital was needed, so the three of them put an additional \$100,000 back into the company. FIRST NATIONAL BANK of Little Rock carried the note on this money with the stipulation that the money had to go directly to the COLLINS, LOCKE, AND LASATER COMPANY. Mr. LASATER stated that he personally placed an additional \$100,000 into what he described as a subordinated debenture which left them with \$225,000 for the operation. He described the business during the fiscal year 1981 as less than successful, but with the urging of DAVID COLLINS, Mr. LASATER stated he placed an additional \$500,000 into a subordinated debenture for COLLINS, LOCKE, AND LASATER in August 1981.

In August 1982, COLLINS, LOCKE, AND LASATER made \$1 million in profits, but in the following months, the company started losing money, causing him a risk of nearly \$1 million.

FBI-00003572

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER On 10/14/86 Page 5

Compounded by a loss of profits and being told on May 13, 1982, that there were possible tax violations, COLLINS, LOCKE, AND LASATER was established as a holding company in December 1982.

It was determined during this time period that the Securities Exchange Commission (SEC) and other regulatory agencies had to be notified regarding the possible tax violations.

In August 1983, COLLINS, LOCKE, AND LASATER (CL&L) was dissolved. However, GEORGE LOCKE had not been part of the company as of November 1982.

Mr. LASATER advised that his first contact with cocaine was in the late 1970's possibly 1978 or 1979 in Lexington, Kentucky. He recalls during this period of time he was possibly given cocaine by JIMMY LAMBERT, whom he described as a personal friend at the time and who operated a nightclub in Cincinnati, Ohio.

During his early association with DAVID COLLINS and during the time that he was partners with DAVID COLLINS in the COLLINS, LOCKE, AND LASATER COMPANY, DAVID COLLINS gave him cocaine a minimum of fifty (50) times, usually in bump amounts, over a period of two or three years. He does not recall ever pooling an amount of money with GEORGE LOCKE or DAVID COLLINS in which the pool of money was to go for the sole purpose of purchasing cocaine.

As he recalls, GEORGE LOCKE's first experience with cocaine was the same time as his at JIMMY LAMBERT's restaurant in Cincinnati, Ohio.

During the early part of his time in Little Rock, he recalls snorting cocaine at the residence of BARRETT HAMILTON and the residence of JAY DE HAVEN.

FBI-00003573

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER On 10/14/86 Page 6

He does not specifically recall if BARRETT HAMILTON gave him cocaine but recalls that cocaine was present and was being used during this occasion.

He met JAY DE HAVEN through GEORGE LOCKE sometime in late 1978 or early 1979 and has snorted cocaine in DE HAVEN's presence. He has given DE HAVEN cocaine a minimum of twenty-five (25) times, ranging from bumps to half-gram amounts. DE HAVEN has given him cocaine on numerous occasions also. He described JAY DE HAVEN as a former employee of his company who was dismissed from the company in October 1984 following the purchase of the ANGEL FIRE RESORT in New Mexico.

Mr. LASATER recalls that during his visit at BARRETT HAMILTON's residence CURTIS MC CLENDON and GEORGE LOCKE were present and using cocaine.

Even though GEORGE LOCKE would have his own supply of cocaine, he would estimate that he has personally supplied LOCKE with cocaine a minimum of seventy-five (75) times, usually in bump amounts. He has also snorted cocaine which had been provided by LOCKE.

During his early use of cocaine, he maintained his supply in his pockets and even snorted cocaine at his office.

After the employment of CHUCK BERRY, BERRY usually kept up with his supply of cocaine, and he was aware that as much as one ounce of cocaine was on hand. However, he stated that he was unaware that CHUCK BERRY was selling cocaine on his own.

He recalls confronting BERRY about selling cocaine and advised BERRY that if he were selling cocaine on his own he wanted his ass away from him because it would appear that if BERRY was selling cocaine he (LASATER) was selling cocaine also.

FBI-0D003574

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86

Page 7

Mr. LASATER stated that he was aware that CHUCK BERRY obtained nearly all of the cocaine from GLENN BRADLEY but that BERRY also obtained cocaine from HERBIE DOUGLAS.

Mr. LASATER admitted that he had purchased approximately one but not more than two ounces of cocaine from GLENN BRADLEY after being introduced to BRADLEY by a mutual friend of GEORGE LOCKE and GLENN BRADLEY. As he recalls, the young girl was from Dallas, Texas, but had grown up in GEORGE LOCKE's hometown of Hamburg, Arkansas. He stated that this purchase occurred at Apartment 12B, QUAPAW TOWERS, Little Rock. To the best of his recollection, he paid approximately \$2,200 per ounce.

He stated that he made a subsequent purchase of cocaine from GLENN BRADLEY in which he and GEORGE LOCKE drove to BRADLEY's residence, and he purchased approximately one-quarter (1/4) to one-half (1/2) ounce. Mr. LASATER stated that he personally made the purchase.

After these initial purchases of cocaine from BRADLEY, it was CHUCK BERRY's responsibility for buying the cocaine from BRADLEY, and he always made sure that BERRY had money on hand to purchase the cocaine. BERRY would come to him for the money, and he would usually give him approximately \$5,000. However, he never instructed BERRY to purchase in excess of one ounce.

Within this time frame, he recalls that BRADLEY contacted him and advised that CHUCK BERRY owed BRADLEY approximately \$11,000 for past due cocaine debts. BRADLEY was wanting him to make good on the amount of money owed by BERRY. Mr. LASATER stated that he never paid BRADLEY for CHUCK BERRY's cocaine debt.

He explained that CHUCK BERRY and HERBIE DOUGLAS were initially hired by DAVID COLLINS and that BERRY ended up being the driver for the company limousine and what Mr. LASATER described as a gofer for the company. He described BERRY as always having a gun but that he never told BERRY to have it in his possession or wear it. He recalls that efforts were made by GEORGE LOCKE to acquire a pardon for CHUCK BERRY and another employee by the name of GARY TIPPET. He does not recall specifically but thinks that TIPPET was granted a pardon by the state of Arkansas.

FBI-00003575

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER, On 10/14/86, Page 8

He related that BERRY was employed at a salary of \$20,000 per year plus all expenses. He cannot recall ever seeing CHUCK BERRY drink alcohol or snort cocaine.

Mr. LASATER stated he was aware that CHUCK BERRY had traveled to the state of Florida and purchased cocaine from an unknown individual. He recalls giving CHUCK BERRY \$5,000 after BERRY came to him and stated that he would be in Florida as things were getting hot, and while he was down there, he would get an ounce of cocaine. As he recalls, CHUCK BERRY has both flown and driven to the state of Florida, and his suspicions are that CHUCK BERRY's connection for cocaine was the brother of FRANK (Last Name Unknown) (LNU), the boat pilot for the company boat, PAR VALU.

Mr. LASATER stated that he is familiar with AL WELLS, that on one occasion approximately three or four years ago, he purchased one ounce of cocaine from WELLS, and that this purchase occurred at Apartment 12B, QUAPAW TOWERS, Little Rock.

In October 1982 and at the insistence of DAVID COLLINS, a boat was purchased for the company with DAVID COLLINS putting up one-half ($\frac{1}{2}$) of the amount of the purchase price and CL&L putting up the additional one-half ($\frac{1}{2}$) of the purchase price.

Eventually, the boat was purchased by LFI CORPORATION, which is a corporation set up for LASATER's children, and the boat was leased back to CL&L.

The boat was eventually sold to an individual by the name of DON WALKER, former governor of the state of Illinois. DAVID COLLINS handled the sale of the boat, and money was lost in the deal.

In regard to DON WALKER, Mr. LASATER advised that he had loaned WALKER \$200,000, and since WALKER was a customer, there were no improprieties surrounding the loan. WALKER was the owner of a JIFFY LUBE Company and a savings and loan and was in financial straits at the time. Stock for the savings and loan company owned by WALKER was held as collateral on the loan, which was eventually paid in full.

FBI-00003576

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86

Page 9

With regard to a trip to Belize, Central America, Mr. LASATER stated that he; PATSY THOMPSON; JIM ALEXANDER; ED CUMMINGS, an attorney from Washington, D.C.; CHUCK BERRY; and an individual from the state of Oklahoma whose name he does not recall traveled with the purpose of purchasing a 24,000-acre farm or ranch. The transaction included having to deal with the governor of Belize, who, for some unknown reason, was hard to deal with. He recalls that for this reason JIM ALEXANDER made some type of off-the-wall statement that the governor should be wasted. Mr. LASATER recalls becoming very perturbed over this statement and proceeded to leave the meeting, and the purchase transaction never occurred.

On their return trip to the United States, he did not recall any unusual circumstances which occurred with United States Customs agents in New Orleans, Louisiana, or in Little Rock, Arkansas, other than the fact that JIM ALEXANDER had been confronted by the agents regarding night vision goggles which he had in his possession.

When questioned about a particular trip to South America, Mr. LASATER related that in 1977 or 1978 he, JOHN KEENAN, and GEORGE LOCKE purchased a Learjet aircraft with each sharing one-third (1/3) of the expenses. Due to the lack of use of the aircraft, all three agreed to lease the aircraft, and KEENAN arranged for someone to lease the aircraft in Las Vegas, Nevada. He recalls that GEORGE LOCKE traveled to Las Vegas where the plane was leased to an ambulance service which had been hired to travel to Bogota, Colombia, in order to bring back to the United States a young individual who had crashed an aircraft with drugs onboard. As he recalls, the individual had been badly burned, and the individual was to be flown to the Burn Center in Houston, Texas. He recalls that upon landing in Bogota, Colombia, South America, officials of that government seized the aircraft. Mr. LASATER stated he was not aware of what eventually happened to the aircraft, but since it was insured by LLOYD'S OF LONDON, he did not experience a loss.

FBI-00003577

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86 Page 10

Mr. LASATER stated that he is familiar with MITCHELL WOOD and that he met WOOD through GEORGE LOCKE sometime in 1979 or 1980 and started using cocaine with MITCHELL WOOD sometime in 1980 or 1981. He advised that he gave MITCHELL WOOD cocaine a minimum of twenty-five (25) times in bump amounts. He related that MITCHELL WOOD has given him cocaine a minimum of three or four times, also in bump amounts. He is not aware if CHUCK BERRY ever sold MITCHELL WOOD cocaine. He is aware that MITCHELL WOOD is employed by the ARKANSAS INDUSTRIAL DEVELOPMENT CORPORATION (AIDC) in some type of teaching capacity. He described MITCHELL WOOD as a friend, and when MITCHELL WOOD traveled with him or attended parties with him, he (Mr. LASATER) usually took care of the expenses.

He has loaned MITCHELL WOOD money, usually in \$200 to \$400 amounts, on several occasions in which WOOD would come to him for a loan in order to meet personal bills. He advised that MITCHELL WOOD presently owes him approximately \$2,000.

Mr. LASATER advised that when he placed bets with bookies, it was always with EDDIE STAFFORD or JIMMY NEWBERRY and that he never placed a bet with AL WELLS.

Mr. LASATER described DAWN SIMS as a former employee who was hired by his wife, LINDA LASATER, to work as a babysitter and to perform housecleaning duties. He admitted giving cocaine to DAWN SIMS approximately two times and always in bump amounts. He denied ever giving cocaine to the daughter of DAWN SIMS. DAWN SIMS' employment was terminated by LINDA LASATER after LINDA suspected SIMS of making advances to him (LASATER). He recalls hearing a rumor that DAWN SIMS was selling cocaine after her dismissal by LINDA LASATER. As he recalls, DAWN SIMS resided in an apartment somewhere near the intersection of Fair Park and Kavanaugh.

FBI-00003578

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER On 10/14/86 Page 11

Mr. LASATER advised that TOMMY TULLOS was one of the first salesmen hired by DAVID COLLINS for CL&M. He has furnished TULLOS cocaine on four to six occasions in bump amounts. TULLOS has given him cocaine four to six times in bump amounts. These occasions usually occurred during social events or at the office.

He stated that his first association with REGGIE TAYLOR occurred at BENNIGAN'S Restaurant during a time when a number of the employees from his office were together. DAVID COLLINS was present with his wife, and REGGIE TAYLOR wanted to dance with her, which caused DAVID COLLINS to almost go berserk. His next meeting came one month later in 1982 when DAVID COLLINS brought REGGIE TAYLOR to his office and advised him that REGGIE TAYLOR had been hired as a salesman by CL&M. REGGIE TAYLOR was an instant success as a salesman, but as his continued use of cocaine grew, his work habits deteriorated.

Mr. LASATER stated that REGGIE TAYLOR furnished him one gram of cocaine on one occasion but that he has given him bump amounts four or five times when at REGGIE TAYLOR's apartment at the BRIGHTWATER Complex. He stated he has never seen large quantities of cocaine at TAYLOR's apartment, but he socialized with TAYLOR on a limited basis. Housing for TAYLOR was not furnished to him by the company.

Mr. LASATER said that he was responsible for introducing REGGIE TAYLOR to JAY CAMPBELL, who is a deputy for the Pulaski County Sheriff's Office. He recalls that REGGIE TAYLOR bought a car from JAY CAMPBELL, but apparently REGGIE did not make the payments, and JAY CAMPBELL repossessed the car. He has never told REGGIE TAYLOR to buy a car from JAY CAMPBELL and knows nothing further surrounding the circumstances concerning CAMPBELL's selling TAYLOR the vehicle.

FBI-00003579

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86

Page 12

Mr. LASATER advised he has known JAY CAMPBELL since he was 13 or 14 years old as CAMPBELL was a friend of TOMMY VANCE, the son of DAVID VANCE, who was an employee of his. VANCE was his trainer during the time that he was in the thoroughbred racing business.

JAY CAMPBELL has never furnished LASATER any information regarding any investigation in which CAMPBELL was involved, either with the Drug Enforcement Administration (DEA) Task Force or the Pulaski County Sheriff's Office. CAMPBELL has commented that he thought the investigation surrounding him (LASATER) was "chicken shit."

CAMPBELL has flown on his plane on two occasions which he can recall, the first being the Arkansas Razorback game against the University of Mississippi at Jackson, Mississippi, and the second being the World Series game in St. Louis, Missouri, between the St. Louis Cardinals and the Kansas City Royals in October 1985.

Mr. LASATER stated that regarding any information pertaining to investigations surrounding himself he had been advised by GARY TIPPIT, DICK MOORE, GEORGE LOCKE, and JAY DE HAVEN to watch out, slow down the parties, and that most of it was just rumors. He stated that he slowed down on attending parties and hired a private investigator to conduct sweeps for listening bugs at his home, his office, and especially at Apartment 12B, QUAPAW TOWERS.

He first learned that JAY CAMPBELL was associated with the DEA on the plane trip to the Arkansas/Ole Miss football game at Jackson, Mississippi, in 1985 when it was mentioned by CAMPBELL himself.

However, CAMPBELL had told him that as an officer with the Pulaski County Sheriff's Office he had been watching him (LASATER) in connection with his official duties but that he found that there was not enough there to make a case.

FBI-00001580

Other individuals who had flown with him on the previous two plane trips mentioned herein were TOMMY MITCHUM; LARRY DILL; Mr. CHAMBERS, Arkansas State Police; JAY CAMPBELL; and KERRY THOMAS, Pulaski County Sheriff's Office. Mr. LASATER identified TOMMY MITCHUM as a state representative who had been introduced to him by GEORGE LOCKE several years ago and that MITCHUM would stay at the company's BRIGHTWATER APARTMENTS when MITCHUM was in town. He denied ever loaning JAY CAMPBELL or LARRY DILL any money in the past.

Regarding other law enforcement personnel, Mr. LASATER stated that he was familiar with MIKE MAHONE, Arkansas State Police, and that on the weekend of July 4, 1985, MAHONE and his wife SHIRLEY stayed in a condominium at the ANGEL FIRE RESORT, New Mexico. The condominium in which MAHONE and his wife resided belongs to LEI CORPORATION, which is a corporation set up for his (LASATER's) children, and that MAHONE did not have to pay for staying in this condominium. He does not recall who paid MAHONE and his wife's flight fares to the ANGEL FIRE RESORT that LASATER AND COMPANY may have paid for the flight.

He first met MAHONE when MIKE MAHONE him during the SAM ANDERSON investigation. The took place at the office of SKIP DAVIDSON, Attorney represented him at the time.

Since that time, MAHONE has been in frequent contact with him. On one occasion, MAHONE requested assistance in trying to find someone to purchase a home which belonged to MAHONE. MAHONE told him that the home was appraised at \$70,000. As a result, he requested BILL MC CORD, an employee of LASATER AND COMPANY, to look at the house. Mr. LASATER stated that he requested MC CORD to buy the house, and the house was purchased for \$60,000, but a lot of repairs had to be done. MC CORD did the repairs and eventually sold the house, but MC CORD lost approximately \$6,000. Mr. LASATER said that he promised MC CORD that he would make good on MC CORD's loss, but, to date, he has not repaid MC CORD.

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86

Page 14

As he recalls, MIKE and SHIRLEY MAHONE then moved into a house in Jacksonville, Arkansas.

MAHONE would be a frequent caller at the LASATER AND COMPANY office and seemed to push to ingratiate himself to LASATER. On one occasion, MAHONE met him at the LASATER AND COMPANY office and asked questions about former employees by the names of GEORGE IRWIN, WES MOODY, and ERICK WESTERMAN, but he did not recall at this meeting if MAHONE mentioned anything concerning the present ongoing investigation.

However, during subsequent meetings with MAHONE, MAHONE would indicate to him that everything was okay.

Sometime during the summer of 1986, MAHONE indicated to him that he would be in Chicago, Illinois, and he met with MAHONE and GEORGE LOCKE for breakfast in Chicago. Even though he cannot recall specifics, the investigation that is currently being conducted concerning himself was discussed. He recalls that MAHONE advised that it was a task force investigation and that when questions were asked of MAHONE he would reply, "Looks like it," "Might be." He does not recall if MAHONE mentioned J. N. "DOC" DE LAUGHTER specifically.

Mr. LASATER advised that during the occasions when MAHONE had interviewed him concerning the SAM ANDERSON cocaine investigation he admitted to MAHONE that he had done cocaine with ANDERSON. There were no other law enforcement officers present during the interview, and he was never called as a witness during the SAM ANDERSON trial.

Mr. LASATER stated that MIKE MAHONE arranged through him to obtain a loan in the amount of \$25,000 in which MAHONE indicated that the money would go for renovation of his mother's residence in Chicago, Illinois. MAHONE did not personally make the loan but arranged to have the loan made in his sister's name. At the time, his sister resided in Atlanta, Georgia, and the renovation was to be done on a house in Chicago. Mr. LASATER said that he arranged to make the loan to MAHONE in a roundabout way and that he approached a friend of his by the name of JOHN FURNUNG to make a \$25,000 loan on a 90- to 120-day note. Mr. LASATER said that payment on the note was made by the sister on only approximately two-thirds (2/3) of the interest and that efforts to get MAHONE or his sister to pay the note met with negative results. Mr. LASATER advised that

FBI-00003582

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

, On

10/14/86

Page

15

he personally loaned FURNUNG \$7,500 to make a payment on the principal of the note, but later, he personally paid off the note which had been arranged by and drawn up by an attorney friend by the name of LARRY COLLINS in Ocala, Florida.

Mr. LASATER advised that as recently as eight months to one year ago, MIKE MAHONE has shown him papers or reports of official state police documents regarding the state police investigation of this matter, but he does not recall the specifics at this time.

He recalls MAHONE being very persistent about the loan but that MAHONE never threatened him in any way. Mr. LASATER said he felt that MAHONE had contacted him about the loan as a friend but he (LASATER) was afraid that a personal loan from him would reflect unfavorably on himself (LASATER).

It was MAHONE who suggested that the loan be made to his sister because he (LASATER) refused to make it directly to MIKE MAHONE. During the period of the note, efforts were made to have MIKE MAHONE contact his sister to see if there could be some type of payment made, but this was unsuccessful.

Mr. LASATER said he initially tried to obtain the loan through JERRY CONDLIK, a Chicago customer, but after Mr. CONDLIK had someone to look at the house, he refused to make the loan.

Mr. LASATER advised that in a meeting with MAHONE in the summer of 1986 in Chicago, Illinois, MAHONE furnished him information on how to protect himself from the investigation. He stated that MAHONE said to be careful who you are with and do not use cocaine. He advised LASATER to keep a diary regarding hour-by-hour contacts and made a suggestion that it would be a good idea to contribute to the GYST HOUSE. Mr. LASATER said that GEORGE LOCKE was present during this meeting and that LOCKE met with MAHONE later that same day.

FBI-00003583

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On

10/14/86

Page

16

Mr. LASATER said he recalls in other meetings with MAHONE that MAHONE had displayed to him a ledger sheet which reflected checks that had been paid to HERBIE DOUGLAS and PAULA COLLINS. He surmised that it was a ledger sheet reflecting personal transactions by DAVID COLLINS. There were two or three copies of the list, and they were handwritten with the name, the check number, and the amount on the ledger sheet.

He recalls that during one of the meetings in Chicago with MAHONE, MAHONE made available to him a beeper to use in case he had to get in touch with MAHONE. The beeper was never used and was eventually packaged and given to Attorney DICK MOORE.

Mr. LASATER reiterated that BILL MC CORD purchased MIKE MAHONE's house at his insistence, and it was just to help out MIKE MAHONE.

In relation to MIKE MAHONE, Mr. LASATER said he had recently received a letter from MAHONE in which MAHONE wished him good luck and told him to "hang in there" and that he (MAHONE) was not too proud of law enforcement during this time.

Mr. LASATER stated that there were no improprieties regarding his association with TOMMY ROBINSON, U.S. Congressman, and that he was a contributor to Mr. ROBINSON's campaign for Congress. He also contributed to Mr. ROBINSON's campaign for Pulaski County sheriff. He explained it was always the legal amount that was allowed by law.

Mr. LASATER denies any improprieties surrounding his association with Judge ALAN DISHONGH, Municipal Court Judge, Little Rock, and to his knowledge, Judge DISHONGH has never visited the ANGEL FIRE RESORT in New Mexico as he is aware that DISHONGH has his own place at Taos, New Mexico.

FBI-00003584

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On

10/14/86

Page

17

The only favor he has asked DISHONGH to do for him was to marry JAY DE HAVEN and his wife.

He is unaware of any activities or associations which CHUCK BERRY has with Judge ALAN DISHONGH but indicated that most of the employees in the Municipal Court Building are black females and that Mr. BERRY may have some association with someone there. He has contributed to Judge DISHONGH's political campaigns in the past but always within the legal amount allowed by law.

Mr. LASATER denied that there were any payoffs made to Judge DISHONGH surrounding an incident which occurred with HOLLY HORNIBROOK, who is the daughter of a probation officer for the city of Little Rock.

Mr. LASATER stated he is familiar with LARRY ROSENFELD, whom he met for the first time at a New Year's Eve party four years in Aspen, Colorado. Mr. ROSENFELD was the bartender, and he was also a salesman who worked in a ski shop in Aspen. Mr. ROSENFELD is presently an employee of LASATER AND COMPANY but was previously employed with CL&L. He advised that Mr. ROSENFELD has furnished him cocaine in the past but does not recall ever purchasing cocaine from ROSENFELD. ROSENFELD has given him cocaine on three or four occasions in bump amounts. During one of the parties in Aspen, Colorado, there was cocaine in the house, and the party was attended by approximately eighty (80) to one hundred (100) people. During this period of time, he (LASATER) had in his possession one to two grams of cocaine. He stated the cocaine was especially for DAVID COLLINS, GEORGE LOCKE, and himself.

He has seen ROSENFELD in possession of as much as one-half (1/2) gram of cocaine.

Mr. LASATER identified WALTER WEST as a former salesman for CL&L who always had cocaine in his possession. He has purchased cocaine from WALTER WEST a minimum of three to four times and usually in gram amounts ranging in the neighborhood of \$100 per gram. Mr. WEST has given him cocaine in bump amounts approximately ten times during parties at Mr. WEST's house and at parties conducted at Apartment 12B, QUAPAW TOWERS. He is a close friend of LYNN KEMPNER and CURTIS MC CLENDON. Mr. WEST left the employment of CL&L in the early fall of 1983 or January 1984.

FBI-00003585

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On

10/14/86

Page

18

Mr. LASATER identified MICHAEL STANDRIDGE as an individual who was employed by CL&L and transferred to the Florida office and who stayed one year after DAVID COLLINS left the company. He stated he bought cocaine in small amounts approximately three times. It was usually in gram amounts for which he had to pay \$100 to \$125 for each gram. Mr. STANDRIDGE has given him cocaine two or three times in bump amounts. He denies ever pooling money with GEORGE LOCKE and DAVID COLLINS in which the money was given to MICHAEL STANDRIDGE in order to purchase a large quantity of cocaine.

Mr. LASATER denied ever knowing DAVID GINGRASS and denied ever purchasing cocaine from GINGRASS.

Mr. LASATER said that one of the largest amounts of cocaine he has personally ever seen on someone was approximately two years ago during the summer of 1984 in which TONY ALADINE attended a party at Mr. LASATER's house and had a bag of cocaine stuffed in the top of his boot and which he would estimate was approximately three to four ounces. Mr. LASATER recalls telling ALADINE to leave the party, and as he recalls, ALADINE was eventually prosecuted for something unrecalled within the recent past.

Mr. LASATER advised that he is a personal friend of JOHN Y. BROWN, former governor of the state of Kentucky, and the owner of the KENTUCKY FRIED CHICKEN franchise. He first met BROWN through his association with the PONDEROSA Steak House, and their mutual friendship with JIMMY LAMBERT, Lexington, Kentucky.

Sometime after 1982 and possibly before August 1983, Mr. LASATER said he was contacted by JIMMY LAMBERT who told him that JOHN Y. BROWN had taken \$1 million in cash out of a bank in Florida and that no cash transient report had been filed on the amount. As a result, BROWN needed \$300,000 in cash. Mr. LASATER said he made efforts to help BROWN and contacted BENNY RYBURN, SR., in Warren, Arkansas, who owns a bank. He was advised by RYBURN to go to UNION NATIONAL BANK in Little Rock and obtain the \$300,000 from BOB CONNER. Mr. LASATER advised that he signed a personal note for the amount but that when he went to pick up the cash he was requested to sign a cash transient report, which he refused. He stated Mr. RYBURN had the cash sent by BENNY CALHOUN, and he (LASATER) signed a note for the amount with the bank in Warren, Arkansas.

FBI-00002586

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER On 10/14/86 Page 19

After obtaining the \$300,000, he flew to Lexington, Kentucky, and turned over the money to JIMMY LAMBERT at the airport. The money was carried in a paper sack, and the \$300,000 amount was paid back within six months without any payment on the interest. Mr. LASATER said he paid the interest on the amount himself when he paid off the \$300,000 note.

When the note was due, the money was wired to him in care of his bank account at what was then FIRST NATIONAL BANK in Little Rock.

Mr. LASATER advised he first met TONY ANAYA in October 1984 when Mr. ANAYA was governor of New Mexico and was a guest speaker at a barbecue during the inaugural opening of ANGEL FIRE RESORT in New Mexico. Mr. ANAYA has never done him any personal favors even though he may have been responsible for blacktopping a road between More and Black Lake, New Mexico. It was not done as a favor to him. The road was paved sometime during the summer of 1985, and even though it benefited employees of ANGEL FIRE, there were no improprieties on his part or the governor's part.

He explained that the 8,900-foot runway at the ANGEL FIRE RESORT, New Mexico, was already under construction when he purchased the resort. There were 110 acres donated to the county during the construction of the runway, but there were no improprieties on his part or the governor's part regarding this transaction.

Mr. LASATER says he does recall that ODIS ECKLES has talked to Governor ANAYA about a consultant job upon the governor's leaving office sometime at the end of the year 1986. Mr. LASATER identified ECKLES as a consultant for the ANGEL FIRE RESORT Company but that nothing improper surrounded his offer to the governor.

Mr. LASATER stated CLARENCE STRAHAN was an employee who formerly worked for GEORGE HALL at the CAPITAL CLUB in Little Rock, and he became familiar with STRAHAN who worked as a bartender and waiter at several of the company parties. He personally hired STRAHAN as a personal valet on his aircraft, THE CHALLENGER, which he sold in December 1985. STRAHAN started his employment in July 1984. He is presently employed as a salesman for LASATER AND COMPANY. Mr. LASATER

FBI-00003587

LR 245F-2

Continuation of FD-302 of DANNY RAY LASATER On 10/14/86 Page 20

stated that he has seen CLARENCE STRAHAN use cocaine approximately five times and that STRAHAN has had the responsibility of holding his (LASATER's) cocaine on numerous occasions. He stated that CLARENCE STRAHAN has bought cocaine for him approximately three or four times but that the money used for the purchase always came from himself.

Mr. LASATER admitted doing cocaine with GEORGOE HALL and HERBIE DOUGLAS in the past, with one of the occasions occurring at the KING ARTHUR'S CLUB on Markham in 1982 or early 1983. He did not recall to whom the cocaine belonged at the time.

He is familiar with LARRY KELLY, but he has never done cocaine with KELLY, and he has never given KELLY any cocaine.

He is unfamiliar with an individual by the name of BUD GUY. Mr. LASATER advised that he has snorted cocaine with DON BUZANOWSKI, who worked in the Fort Lauderdale, Florida, office. He snorted cocaine with him on one or two occasions and has given him cocaine in bump amounts.

He is only slightly familiar with OMAR BUTTARI as BUTTARI worked in the Fort Lauderdale, Florida, office. He had no drug dealings with BUTTARI.

He is familiar with TOM CARTER, with whom he has snorted cocaine on several occasions in which the cocaine would be both his and TOM CARTER's at the time.

Mr. LASATER related that he has given PAULA COLLINS cocaine ranging from fifteen (15) to twenty-five (25) times in small amounts. He denied ever ordering CHUCK BERRY to give PAULA COLLINS cocaine but was aware that BERRY had given her cocaine in the past. He knows PAULA COLLINS as being the former wife of DAVID COLLINS.

Regarding ROGER CLINTON, Mr. LASATER advised he met CLINTON through MITCHELL WOOD sometime around 1981 or 1982 during the time CLINTON played in a band in the Hot Springs area. CLINTON was employed by him at one time in which Governor BILL CLINTON requested LASATER to hire him. ROGER CLINTON was employed as a stable hand at his Ocala, Florida, horse farm. Mr. LASATER stated he has done cocaine with ROGER CLINTON, and they have shared their personal supplies of cocaine as each of them always had it with them.

FBI-00001588

LR 245F-2

Continuation of FD-302 of

DANNY RAY LASATER

On 10/14/86

Page

21

In regard to the \$8,000 loan made to ROGER CLINTON, Mr. LASATER advised that ROGER CLINTON approached him about borrowing \$18,000 or \$20,000 as Mr. CLINTON explained that someone had stolen his stash of cocaine which belonged to SAM ANDERSON at the time. The cocaine, as he recalls, was supposed to have been in a car that was broken into. He advised CLINTON came to him and said that someone was putting the heat on him and something might happen to his brother and his mother. The loan was not for that large amount, but he consented to loan CLINTON \$8,000. He did not handle the transaction personally but thinks that it was taken care of by one of his employees in the company. The transaction was done with a check, and it was requested that CLINTON turn over his car title for collateral. He denied ever buying cocaine from ROGER CLINTON.

LASATER may have met MAURICE RODRIGUEZ on one occasion at the end of the race season in Hot Springs, Arkansas. It was possibly during the spring of 1983.

Mr. LASATER related that he would estimate that his company has contracted with the state of Arkansas less than one-tenth (1/10) of 1% of the bond business. He denied any allegation of improprieties regarding himself or his company with the governor of Arkansas, BILL CLINTON.

He advised that BILL CLINTON had been at his house on one occasion for a Christmas party and was there only thirty (30) minutes. He also attended a Christmas party at the LITTLE ROCK COUNTRY CLUB and was there approximately thirty (30) minutes. He was present for the opening of PULLEYBONE'S, a local restaurant, and was there approximately thirty (30) minutes also.

Concerning the contract surrounding the bond issue pertaining to the communication system for the Arkansas State Police, Mr. LASATER advised that representatives of the E. F. HUTTON COMPANY represented LASATER AND COMPANY during meetings with the CLINTON staff. There were no improprieties surrounding these meetings, and very few people associated with LASATER AND COMPANY had any dealings with Mr. CLINTON's personnel.

FBI-00003589

LR 245F-2

DANNY RAY LASATER

10/14/86

22

Continuation of FD-302 of

On

Page

Mr. LASATER advised he is familiar with CINDY TIPPIT who is employed by LASATER AND COMPANY as a sales assistant to BILL MC CORD and what he described as a gofer. He has snorted cocaine furnished to him by CINDY TIPPIT, and she has snorted cocaine furnished by him. He advised that he has done this approximately twelve (12) times and that on one occasion CINDY TIPPIT picked up cocaine for him in North Little Rock in a one-gram amount. Mr. LASATER stated he always furnished the money and that she personally brought the cocaine to him. He did not know her source of cocaine.

FBI-00003590

OFFICE OF THE GOVERNOR



MEMORANDUM

To

~~Governor~~

Date:

5/23

From

~~Eathy~~

Subject:

Recs by Dan Lasater

reappt

George Wright
 James Bigman
 Doc Mathis
 Matt Hardwick
 Margaret Lavenport-Jacks

appt

Jim Chow Deaf
 Don Spears
 Ed Willes (actually Patsy re him)

DKSN026466

Lasater Farm
11629 S.E. Co. Hwy. 473
Gainesville, Florida 32674
Phone 904-245-2455

December 14, 1983

The Honorable Bill Clinton
Governor of Arkansas
State Capitol Building
Little Rock, Arkansas 72201

Dear Bill:

It was a pleasure to see you yesterday at the Hot Springs "Christmas to Share" Program and to visit with you by telephone last night.

We wanted to follow up with the details of our conversation in this correspondence. With regard to the dispersal of the securities owned by Mount Hood Pension Fund, National Investors Life Insurance and National Investors Pension Fund, we have been working hand-in-hand with their personnel toward an orderly sale of their holdings and, in fact, we handled the first stage of the dispersal in November when we participated in the liquidation of \$30 million of Illinois bonds. The Companies have been our clients for quite some time and our account representatives are very familiar with the portfolios which is extremely important in the sales process.

It is our belief that an orderly dispersal of these securities will benefit the policy holders and the shareholders of these Companies; thereby, benefiting Arkansas citizens the most. To date, the dispersal has been handled within the State; therefore, any gains or losses have remained in Arkansas.

As we discussed, rumor has it that co-managers of First Boston and Stannens Inc. will be appointed the first of the year to consummate any future transactions in the portfolio. It is estimated that there is approximately \$1.9 billion of debt securities which it is expected will be sold, and if First Boston is appointed, it will mean that a larger percentage of the proceeds will be leaving Arkansas.

Knowing that we have the same dedication to the State of Arkansas, I do not believe that you will want this to happen. However, we do understand the problems which you face at the Insurance Commission and are cognizant that you may have difficulty in maintaining the status quo as far as the dispersal is concerned.

Faced with that reality, we hope that you will be able to take the initiative in strongly suggesting that Lasater & Company may be included with First Boston and Stannens Inc. as a third co-manager. This would mean that a majority of the business would stay in Arkansas.

DKSN027455

Page Two
The Honorable Bill Clinton
December 14, 1982

With regard to the Board of the Arkansas Housing and Development Agency, it is our understanding that the chairmanship rotates annually. Based on this understanding, we would like to recommend our mutual friend George Wright for the chairmanship. George has expressed an interest in the chairmanship and we believe that he would take the time and devote the energy necessary to do a good job.

In addition, it is our understanding that there will be vacancies in January on the AHDA Board and we would like to strongly recommend Dale Taylor, an attorney with First Commercial Mortgage Company. His background and professional capabilities make him particularly suited for service on this Agency Board.

During the recent Special Session, legislation passed creating a commission to study the possibility of creating an agency similar to the AHDA to do public school financing. We would like to recommend Michael Drake, Vice President of Public Finance at Lasater & Company to serve on the Commission. Michael was born at Jackson, Arkansas and his undergraduate degree is from Harding College. Michael did his graduate work at Wayne State University in Urban Planning and Fiscal Affairs and post graduate work at the Harvard-MIT Joint Center for Urban Studies. With his educational background and his knowledge of Arkansas and fiscal matters, we believe he is perfectly suited for the Commission and that he will make a significant contribution.

Finally, let me again say that the Insurance Companies' dispersal of its holdings is very important to us and we sincerely hope that there is some way to make certain that we do not lose our position.

Again, we appreciate your able assistance.

Sincerely,


Dan R. Lasater

DRL/is

cc: Maurice Smith

DKSN027456

The Honorable Bill Clinton
Governor of Arkansas
State Capitol Building
Little Rock, Arkansas 72201

Lasater Farm
Rt. 6, Box 870
Ocala, Florida 32870



DKSN027457

ADFA USE OF OTHER UNDERWRITERS
BY TOTAL DOLLAR AMOUNT OF ISSUE
5 PERIODS

COMPANY	ROLE	AMOUNT
1978		
STEPHENS	OU	15,000,000
TJ	OU	15,000,000
1979-1980		
STEPHENS	OU	304,600,000
TJ	OU	304,600,000
HERRILL	OU	100,000,000
1981-1982		
TJ	OU	286,525,000
STEPHENS	OU	277,325,000
GEORGE	OU	8,250,000
1983-1984		
GEORGE	OU	327,500,000
TJ	OU	327,500,000
STEPHENS	OU	251,135,000
LASATER	OU	251,135,000
PRUDENTIAL	OU	133,635,000
FIRST BOSTON	OU	123,635,000
LAZARD FRERES	OU	104,000,000
CHASE	OU	104,000,000
COLLINS	OU	76,345,000
NORVEST	OU	23,500,000
HERRILL	OU	23,500,000
1985-1991		
TJ	OU	1,405,189,527
STEPHENS	OU	1,405,140,517
GEORGE	OU	849,989,010
CREVS	OU	495,879,844
HERRILL	OU	364,750,000
CITICORP	OU	349,250,000
LASATER	OU	307,094,010
LLAMA	OU	206,327,344
POWELL	OU	169,480,000
FIRST BOSTON	OU	160,000,000
EDWARD JONES	OU	88,134,844
AG EDWARDS	OU	84,564,844
1ST CORR	OU	80,294,844
LEHMAN BRO	OU	76,854,844
CHEMICAL	OU	50,000,000
HOWARD	OU	37,950,000
SIMMONS	OU	19,024,144
GABRIELE	OU	17,550,000
PAINE	OU	17,550,000
HILL	OU	16,095,000
SWEARSON	OU	13,280,000

DKSN026102

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR

ROUTE SLIP

5/2/83

~~EC/Benson~~ / C

NASH

For Record
For Signature
For Distribution
For Return
For Your Information

For Information
For Return
For Return
For Return
For Return

Remarks:

Dave Lesator gave me
this letter when I met
with him on Wed. for
lunch.

Bill is not my kind of
person. HAS ALWAYS caused the
Agency (ARDA) Problems.

407 100-1124

DKSN026484

117 Louisiana Street • Little Rock, Arkansas 72201

LEATHER & COMPANY
H V L S I M E I T I / A U N K L I N S

~~12/15/50~~

not the time
to go this far —

sent to Cal B.

we have
Dinner

The Honorable
Bill Clinton
Governor
State Capitol
Little Rock, Arkansas

DKSN027572

Dan R. Lasater

January 23, 1985

The Honorable
Bill Clinton
Governor
State Capitol
Little Rock, Arkansas 72201

Dear Governor:

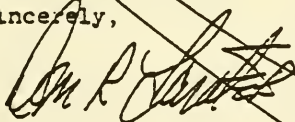
Since our January 4, 1985 meeting I have been to Angel Fire for the Special Winter Olympics. I am sorry to have missed your inaugural activities and want to take this opportunity to again wish you well in this term.

To confirm our conversation of January 4, it is my understanding that you will be appointing Donald M. Spears, an attorney in Malvern, to the Arkansas Housing Board and his appointment will endure any change in structure of the agency.

Members of my staff have been working with Bill Woodyard and others in that firm in an effort to help workout financing details to assist to you in your efforts to advance economic development in the State. If they have failed in furnishing the information you need or if you need additional information please do not hesitate to call me or have Maurice call Patsy.

With the legislature now in town, I know your schedule is full, but I always enjoy the opportunity to visit with you and would invite you to come by for lunch or a drink any time. Too, let me offer our offices, our staff or our resources to you for the entertainment of any guests from the State of Arkansas or outside of the State.

Sincerely,



312 Louisiana Street
Little Rock, Arkansas 72201
(501) 376-0069

DKSN026479

Lasater & Company

INVESTMENT BANKERS

August 21, 1985

Mr. Paul Young
Vice President
T. J. Raney & Sons
Investment Bankers
3600 Cantrell Road
Post Office Box 3647
Little Rock, Arkansas 72203

Re: Arkansas State Police Communications
Financing Expenses

Dear Paul:

Lasater & Company submits the following expenses for reimbursement on the referenced transaction:

Travel, entertainment and miscellaneous:	\$ 750.00
Legal, organizational and miscellaneous:	<u>\$26,500.00</u>
Total:	\$27,250.00

Thank you in advance for your enthusiastic support of our efforts.

Sincerely,

Michael J. Drake
Michael J. Drake
Senior Vice President

MJD/jp

312 Louisiana Street • Little Rock, Arkansas 72201
501 374-0000 • National WATS 1-800-643-5072
Arkansas WATS 1-800-462-6496



141 W. Jackson Blvd. Suite 1605 • Chicago, Illinois 60604
312 341-0070

Didn't have large cocaine dealings with Roger Clinton, lawyer testifies

By PHILIP L. ALTMAN
GAZETTE STAFF

NOT SPRINGS — Sam Anderson Jr., a Hot Springs lawyer charged with distributing cocaine and conspiracy to distribute cocaine, took the stand in his own defense Wednesday and denied allegations he had purchased thousands of dollars' worth of cocaine from Roger Clinton.

Both sides have now rested and the case will go to the jury today. Federal Judge Oran Harrie kept court in session Wednesday until after 8 p.m. to allow the defense to complete its presentation.

The government has charged that between November 1983 and June 1984, Anderson paid \$32,000 for cocaine to Roger Clinton, who is the younger brother of Governor Bill Clinton, and Maurice Rodriguez, a Colombian national living in New York City. Clinton has testified he was the go-between for a majority of the purchases. Clinton and Rodriguez have pleaded guilty to drug charges and have been sentenced to federal prison terms.

Says witnesses lying

Anderson admitted that he used cocaine and gave it to friends, but said he did not sell the drug to several witnesses named in the indictment. When United States Attorney W. Asa Hutchinson asked Anderson about some specific allegations by witnesses, Anderson said they were lying.

He said his cocaine purchases from Clinton were far below the figures used by the government and that the drug was intended only for his personal use. Anderson was asked by Hutchinson if he had other sources for cocaine and he said he had made small purchases from Curtie (Chuck) Berry, who said in testimony Tuesday that he was a chauffeur for Dan Laister, a Little Rock businessman. Hutchinson asked Anderson

if he had other sources and he said "none other came to mind."

Anderson said he began using cocaine in 1981 or 1982 and he said it was Roger Clinton who had first offered him the drug. He said he and Clinton were long time friends and often met in night clubs in Hot Springs and that the offer of cocaine "would usually happen late in the evening, after we had been drinking for some time."

Anderson said his consumption of the drug increased and he noticed it was having an effect on his health. "I was trying to go non-stop, around the clock, and it began to catch up with me," he testified.

Anderson said he had met Rodriguez through Roger Clinton and another friend, Lana Crews. He said he was told Rodriguez was a chef and that his name was Maurice West. Anderson said he had never purchased cocaine from Rodriguez and had not been aware Rodriguez sold the drug.

Meeting arranged

In the summer of 1984, Anderson said Roger Clinton contacted him and told him that he had to see him. They arranged to meet in a boat on Lake Hamilton because Clinton said he didn't want to be seen in a public place with Anderson, then a congressman.

Anderson said Clinton told him that he had been approached by State Police investigators and that he was "very, very frightened," totally frightened to death. He said Clinton informed him that the investigators wanted to "set up three peepers" — Clinton's drug supplier, Anderson and Laister. Anderson said that during the Lake Hamilton meeting he had seen "an unmarked car coming along the shoreline."

After that conversation, Anderson said Clinton called him on the phone "and talked extensively about cocaine." It was obvious to me that he had been instructed to

do so," that he wanted to implicate me over the telephone."

Anderson said that Gina Canada, 23, of Hot Springs, whom he dated for a time in 1983 "had not been truthful with this jury" in her testimony. Canada testified Tuesday that she had used cocaine that Anderson had provided and had seen him sell the drug on two occasions. He said that Canada accompanied him on a trip to Europe in 1983 and that their relationship had been "strained" before their departure "and in Europe, it got worse." He said that he terminated their relationship because Canada "had a bad habit of consuming large quantities of alcohol, was abusive and violent."

Tries to show whereabouts

Using his desk calendars, credit card slips and telephone bills, Anderson attempted to establish his whereabouts on the approximate dates in which the government alleges that various drug transactions were made. He admitted the information would not account for his options "every hour of the day and night." Defense attorney Floyd Clardy of Bryant said it had been difficult to compile the information "because every time we told the government where Anderson was they changed the dates of the alleged offenses for which Anderson is charged."

The government did drop one count of the indictment that alleged Anderson distributed cocaine on June 27, 1984, after he showed that he had been in Fort Worth on that date.

Anderson was asked about a Christmas party he is alleged to have held at his home in Hot Springs December 16, 1983, during which Roger Clinton allegedly delivered cocaine he had picked up from Rodriguez in New York City. Anderson said he didn't recall the event. "I might have had a party that night, but I just can't recall," he testified.

DKSN017635

F O BOX 319
LITTLE ROCK, ARKANSAS 72203

MEMORANDUM

To : Gov Date: 10/9/82

From : Getsey

Subject: ADFA fact sheet

Attached is the first draft of the ADFA fact sheet which will be given To Brummet and Barton today. Definitions will be added to it and the column for underwriters counsel will be next to the underwriters.

Courtesy calls will be made by Wooten to the firms this morning telling them we are releasing it.

In your meeting with Herschel Friday, you should acknowledge/explain it.

DKSN026125

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

TERRY K. REED and JANIS REED

PLAINTIFFS

VS.

NO. LR-C-94-634

RAYMOND YOUNG, in his individual and
official capacities, TOMMY L. BAKER,
in his individual and official capacities,
DONALD SANDERS, in his individual and
official capacities, DAVID DOE,
ROBERT POE, and other unknown persons

DEFENDANTS

ORAL DEPOSITION

OF

BARRY SPIVEY
(Taken August 9, 1995)

1 capacity was. He was one of the top two or three people on
2 Bill's staff.

3 Q. Okay.

4 A. He was kind of like a co-chief of staff you might say.
5 Bill placed a lot of, had a lot of confidence in Bob and, you
6 know, he was a good guy, level headed and like that.

7 Q. Do you recall an individual by the name of
8 Akihi Sarabara, a Japanese individual coming to the Mansion?

9 A. I --

10 Q. Also known as Aki?

11 A. That don't mean nothing to me right now. I can't recall
12 anything like that.

13 Q. Do you remember Dan Lassiter coming to the Mansion?

14 A. Yes. And I remember going to Dan's a lot. We went down
15 there more than Dan came down there I would say.

16 Q. Let's take it separate. How many times did Dan Lassiter,
17 to the best of your recollection, come to the Mansion while
18 Governor Clinton was in the Mansion?

19 A. I was out there a lot of time. I didn't live out there.

20 Q. Okay. On your shift, on your watch.

21 A. I probably took Bill down there by Dan's office. See,
22 Butch Lock, ex-representative, I think, got in some legal
23 problems and had to serve a little stint in the joint. Let's
24 see -- Lock, Lassiter and, Butch Lock, Dan Lassiter and then
25 Lassiter bought them all out.

1 Q. Is Collins --

2 A. Yeah. And right here close was their office. We're just
3 almost in the same area. I would have to drive around to find
4 it, but it was right here close somewhere. I remember a lot
5 of times taking Bill down to Dan's office and he would jump
6 out and I'd circle and wait until he come back and, or I would
7 go inside and stay in the lobby. I never went up behind the
8 closed doors.

9 Q. Let's take the Mansion first. How many occasions did
10 you --

11 A. Did I know personally that Dan came to the Mansion?

12 Q. Yes.

13 A. During the --

14 Q. During the Clinton administration.

15 A. I probably saw him, just like you said -- on my watch and
16 up until '84, I probably saw Dan half a dozen times at least.
17 And I'm going to say that I took him by his office even more
18 than that, just me personally.

19 Q. When he came --

20 A. I'm going to say maybe half a dozen times, and it could
21 have been anywhere from two to ten. We're just kind of
22 splitting the difference. I know it was more than once and it
23 could have been considerably more than even one and I don't
24 know how much more. You know, I didn't pay any attention to
25 that sort of thing then. You know, it was 10, 12, 15 years

1 ago and Dan was just Dan.

2 I remember his car and I remember his face. I knew him
3 personally. I knew who he was because of his horse racing. I
4 want to Oaklawn a lot. That's how I got to know Dan, was
5 through the thoroughbred stuff over there. Even before
6 Clinton was Governor, I knew of Dan Lassiter. We weren't
7 acquaintances. I knew him -- he didn't know me -- through his
8 horse racing.

9 Q. What kind of car did he drive in to the Mansion?

10 A. It seemed to me like he would come in in a vehicle
11 similar to what we would drive the Governor in -- a leased
12 vehicle, either a Lincoln-type vehicle -- you know, a luxury
13 car.

14 Q. Would you happen to remember the license plate?

15 A. Oh, lord, no.

16 Q. And was Dan Lassiter logged in when he came in?

17 A. You know, some of us -- there was a big turnover here,
18 during Bill's administration, in security and I'd rather not
19 go in to why. It gets into personalities and stuff. There
20 was a big turnover, and a lot of the guys got to stay there
21 longer. I was there five years which is considered a long
22 time. You burn out or get run off before then.

23 A lot of us knew some people and just didn't pay as much
24 attention to them as some of the guys. I probably personally
25 wouldn't log Dan in because I knew that he and Bill were

1 friends, that they visited socially. I had flown on his
2 plane. I knew that Bill spent a lot of time at Dan's office,
3 and that Dan spent time at the Mansion. So I personally
4 wouldn't log him in because it wasn't significant. It had no
5 bearing on anything other than maybe it was just a personal,
6 personal visit.

7 Q. Let me ask you this: On what sort of occasions would
8 Dan Lassiter come? Would there be official functions,
9 scheduled appointments or casual visits?

10 A. There would be drop-ins, drop, you know, Bill had, we
11 could monitor -- sitting out in the guard shack, we could
12 monitor. We monitored every phone call with the exception
13 Bill had a private line that wouldn't light up out there. On
14 our phone we had six numbers and if anybody on the Mansion
15 grounds was talking, a light would be lit up for -- but Bill
16 had a private line that we had, did not have access to, did
17 not know the number, didn't want to know it.

18 He could have been up there talking all day long to
19 someone, and we wouldn't have any knowledge of that. And if
20 we would buzz up to put a call through to him, he would have
21 to put the other line on hold because we didn't have access to
22 it. That phone was totally out of our, we never, you know --
23 those records, I don't know who paid the bill. I guess the
24 Mansion administrator. We never saw it, didn't know the
25 number and he used that phone an awful lot that we had no

1 knowledge of.

2 Q. Uh-huh.

3 A. And that was intentional, you know.

4 Q. I understand.

5 A. Because we couldn't, a lot of times people would pick up,
6 phone was lit up. Either accidentally or intentionally pick
7 up the phone and you could listen to conversations. So that
8 was, I'm sure, a provision for that was made by the private
9 line.

10 Q. All right. Can you tell me what sort of occasions
11 Dan Lassiter came to the Mansion for?

12 A. Well, he dropped in, but now I'm not saying Bill didn't
13 call him on his private line or have maybe us to call him and
14 have him come by where it would be just him by himself. And
15 he would also come for public functions, not public but maybe
16 official functions. And he would also come by himself and he
17 would, where it appeared to me, the best I recall, would be
18 just kind of off-the-cuff, drop-in things or in and out, you
19 know.

20 I don't recall any overnight stays or anything
21 particularly outstanding about any of Dan's visits. You know,
22 he was, he -- I didn't pay much attention because he, there
23 wasn't any reason to.

24 Q. And would he come at random times during the day and
25 night or were they just day visits?

1 A. I can't say. You know, it could have been both.

2 Q. Uh-huh.

3 A. Day and night, weekends, all day. It didn't, he just
4 came when he wanted to.

5 Q. Okay.

6 A. We didn't stop him. We knew better. I knew better.

7 Some of the guys, like I said, they were new, you know. There
8 were people that were there very long, you learned who to
9 intercept and who not to intercept.

10 Q. Who to wave by?

11 A. Exactly. Or who just to step out the door and wave at,
12 tell them to go on in, it's okay, or nothing. Just go out
13 and -- and a lot of times, the people that -- like the
14 close-knit group or the inner circle or whatever you call it,
15 a lot of times they would come to the guard shack and visit us
16 and talk and see what was going on even before they went
17 upstairs or would go inside, I mean.

18 Q. So Dan Lassiter, in your view or at least on your watch,
19 was one of the ones that just got waved on?

20 A. He did on my, like you said, on my watch, because I knew
21 Dan. I knew his face, what he drove. I knew his relationship
22 with the Governor was personal and professional and private or
23 whatever it was, on every level. And he -- I don't know -- I
24 can't speak for anybody but myself.

25 Dan never was shown a, shown in through the front door to

1 my knowledge, which meant -- if a person came to the Mansion
2 for the first time, if they were, especially, of any stature
3 and I'm talking about politically or in the community or from
4 out of state or whatever, they were shown into the Mansion
5 through the front door. You didn't go through Miss Liza's
6 kitchen, but now Dan went through the kitchen.

7 Q. Would you say Dan Lassiter was part of this extended
8 family group?

9 A. Well, in a different way, you know. He was, Dan kind of
10 kept, he was kind of in the shadows, kind of a gray area you
11 might say. He didn't frequent the Mansion as much as a lot of
12 the other guys I'm talking about. I personally probably took
13 Bill down there to his office more than Dan came to the
14 Mansion.

15 Q. How many times would you say you took Governor Clinton
16 down to Dan Lassiter's?

17 A. Oh, at least, again, you know, it was more than once and
18 it might have been as many as a dozen, but split the
19 difference -- six, eight, ten times over a -- and a lot of
20 times he'd say stop and he'd jump out and run in and I'd
21 circle the block and he'd jump back in. And sometimes I might
22 park and sit there for an hour and talk to Dan's pilot or
23 something and I would maybe go inside and sit and he would be
24 upstairs and behind closed doors or something.

25 I never went any further than that. A lot of times he

1 would just be in the area and he would say run by Dan's or run
2 by Lassiter's for a minute. I might sit out there double
3 parked and sit there and idle or that kind of deal.

4 MR. ROGERS: Steve, I need to take a break just
5 for a minute, please.

6 (A recess was held and proceedings resumed.)

7 BY MR. SOMERSTEIN:

8 Q. Now, would you say that Governor Clinton went to
9 Lassiter's once a month, twice a month? Could you
10 characterize the frequency of the times they saw each other,
11 either at Lassiter's office or at the Mansion?

12 A. Well, he could have went a lot more than I was aware of.
13 He could have went two days in a row and not again for a
14 month. But I wouldn't have had access to a -- I know he went
15 a lot more times than he went, than when I was with him. If
16 he went as much when the other guys were driving as he did
17 with me, he went a lot because like I said, we were very
18 seldom -- well, shit, we were running late all the time, so we
19 didn't have a lot of time to kill. But we very seldom were in
20 the area when he had any time on his hands that he didn't run
21 in. He went by there a lot, by his office a lot.

22 Q. Do you know what the purpose of his visits were?

23 A. No, no idea.

24 Q. He never discussed them with you or told you why he was
25 going up there?

1 A. No. It wasn't my business. I didn't ask.

2 Q. Okay.

3 A. You didn't, protocol and our instructions were you didn't
4 initiate a conversation with the Governor because he was, his
5 mind was always somewhere else. You didn't initiate a
6 conversation unless he asked. Otherwise, you just stayed
7 quiet.

8 Q. Okay. Did you ever see him carrying anything in or out
9 of Dan Lassiter's office?

10 A. I can't recall. I wouldn't have paid any attention to
11 it. It wouldn't have meant nothing than. Hell, he could have
12 brought a suitcase, a satchel, a paper sack, a cotton sack.
13 He could have brought anything in and out and I wouldn't have
14 any recollection of it. Bill carried a briefcase about
15 everywhere he went so probably he carried a briefcase in and
16 out most the time.

17 He had personalized, you know, nice, personalized,
18 initialed briefcase he carried in and out a lot. I can't
19 remember anything specifically that he took in or brought out
20 of Dan Lassiter's.

21 Q. Okay. And do you know if he ever went to Dan Lassiter's
22 home?

23 A. I never took him. I never was in Dan Lassiter's home. I
24 don't even know where he lived. I guess he had a house or a
25 hotel or a room or apartment or something in Little Rock, but

1 I never was in it and never took Bill to it.

2 Q. Okay. Now, was, was Buddy Young ever with
3 Governor Clinton when he went to Dan Lassiter's?

4 A. I can't answer that. I have no idea. Another, of course
5 this was a, this was violated a lot, but when you went into
6 the unit, the, you were instructed up front: You don't
7 discuss with any other member of this unit anything that you,
8 the Governor or you and the First Family do or that they do or
9 say or that you see or hear. You don't discuss that with any
10 member of the unit or with the, even your wife or -- it's
11 confidential and privileged and you, what you see and hear,
12 you forget it. Okay? That was the official position.

13 Q. Uh-huh.

14 A. I have no idea if Buddy Young ever -- Buddy had a, one of
15 the kind of standing jokes, not jokes, but one, something
16 along the lines you're talking about, though. Buddy liked
17 the -- and Buddy is a friend of mine and this is not running
18 him down I don't think. He was kind of a limelight hog. We
19 accused him of picking the plums, you know, taking the better
20 trips, which might have included some of Dan Lassiter's
21 overlapped -- you know, where Dan and Bill overlapped might
22 have included some of those trips.

23 We worked off of a rotation on major trips other than
24 just in-state jaunts or, you know, like if Bill was going
25 overseas or if he was going to New York or Washington or

1 whatever, we worked off of a rotation to where one guy
2 wouldn't catch -- and then if one guy didn't want it or wasn't
3 available, then someone else would either volunteer or you
4 would skip your turn.

5 Single guys liked to go a lot, you know, because they
6 didn't have family and they got to meet some, meet some
7 nice-looking women and stay at some nice places and drink and
8 eat the best, you know. I mean, if Governor Clinton stayed in
9 the \$300 room in the Waldorf, we stayed next door in the same
10 room or in a comparable room and suite. And if he went to a
11 restaurant where there was a hundred dollars a plate, we had
12 to go in and same plate, the table next to him. We couldn't
13 go down the street to McDonald's.

14 We were on unlimited -- there was no such thing as a
15 limit or a per diem on our moneys that we had access to and
16 could spend because you just couldn't do it, you know. And a
17 lot of times all the stuff was donated and Bill didn't --
18 hell, he didn't carry no money with him. He was always
19 bumming money from us.

20 When we got back, we would have to go to the Mansion
21 secretary and try to talk her out of it. Hell, if he had it,
22 he would lose it. We were always canceling driver's licenses
23 and credit cards because he'd lose them, leave them in
24 somebody's car. He couldn't keep up with nothing. I don't
25 remember what we was talking about now.

2744

MESSAGE

☐ TELEPHONED

☐ CAME BY

☐ WANTS TO SEE YOU

☒ PLEASE CALL

☐ WILL CALL AGAIN

☐ RETURNED YOUR CALL

URGENT

FOR

MS

MR

OF

PHONE

HOME

PHONE

TIME DEADLINE

REFERENCE

REFERRED TO

DATE

TIME

SIGNED

DKSN027453

100-100

MINUTES
ARKANSAS HOUSING DEVELOPMENT AGENCY
SUB-COMMITTEE MEETING
February 17, 1983

The Housing Sub-Committee met Thursday, February 17, 1983 at 2:00 p.m. in the office of the Agency's Executive Director. The Sub-Committee consisted of Chairman Charles Stout, Vice-Chairman Mort Hardwicke and Fred Dacus. Others attending were Robert Hammerschmidt, Executive Director; Linda Trent, Deputy Director of Housing; Vivian Pugh, Deputy Director of Finance; and Bernard Henry, Multi-Family Housing Officer.

Chairman Stout called the meeting to order and stated that the purpose of the meeting was to discuss a proposed solution to the problems with the current Single Family Bond Program. After discussion, it was determined that the composition and breakdown of underwriters in this proposal be as directed below.

Dabbs Sullivan Div., G.K. Baum Co. and
Blyth Eastman Paine Webber - 60%

T. J. Raney & Sons
Stephens, Inc.
Collins, Locke & Laster, Inc. - 40% (13 1/3% each)

The meeting of the Sub-Committee was adjourned at 2:30 PM.

Charles Stout
Charles Stout, Chairman

Robert A. Hammerschmidt ^{Acting}
Robert A. Hammerschmidt, Secretary

Sworn to and Subscribed before me this 16th day of March, 1983.

Notary Public

My Commission Expires: 7-22-90

ARKANSAS HOUSING DEVELOPMENT AGENCY
EXECUTIVE BOARD MEETING

3:00 PM

April 12, 1983

The Arkansas Housing Development Agency's Executive Board met on Tuesday, April 12, 1983, in the AHDA Conference Room.

The Board Members present were Chairman Charles Stout, Vice-Chairman Mort Hardwicke, Mr. Tommy Edwards, Mr. George Wright, Ms. Betty Walker, and Mr. Mahlon Martin.

AHDA Staff present were Linda D. Trent, Acting Executive Director; Midge Pugh, Deputy Director; Susan Young, (Single Family Housing Officer; Bernard Henry, Multi-Family Housing Officer; Gary Arrington, Management Representative; and Randal Jones, Planning Specialist.

Others present were Mr. James R. Carroll of Block Mortgage Co., Inc.; Ms. Patt Greenlee and Mr. Ron Strother of Commercial National Mortgage Company; Mr. Gary Smith of Merrill Lynch; Mr. Charles Henderson, Mr. William Johnson, Mr. Bobby Allison, and Mr. Robert Währendorff of E. F. Hutton; Mr. Joseph Harcum of Lehman Brothers; Mr. Bob Snider of T. J. Rainey & Sons, Inc.; Mr. Michael Drake, of Collins, Locke & Lasater; Mr. Jeff Orum of Blyth Eastman Paine Webber; Mr. Dabbs Sullivan of Dabbs Sullivan Division; Ms. Suzanne Young and Ms. Darlene Caery of

Firstsouth; Mr. Ron Roy and Ms. Cherry Duckett of Arkansas Energy Office; Ms. Johnnie Holcomb and Mr. Charles Crow of Stephens, Inc.; Mr. Jim Fowler of Rose Law Firm; and Mr. Dale Taylor of First National Mortgage Company.

Chairman Stout called the meeting to order at 3:00 PM. Chairman Stout stated that the previous month's Board Meeting Minutes (March 16, 1983) and Subcommittee Meeting Minutes (April, 1983) should be approved if there were not further additions or corrections, and the Board approved the minutes.

Chairman Stout called on Ms. Trent for the Executive Director's Report.

Ms. Trent informed the Board that we have approximately \$1.5 million that has not been committed in our Home Improvement Program, but we have asked for an extension on this program through the end of July. We have not received word from bond counsel on this extension, but we don't foresee any problem in getting the extension.

On the 1982 Single Family Bond Issue we have purchased \$10.5 million to date and are continuously purchasing approximately \$150,000 per week.

All projects in Multi-Family are either running on schedule or ahead of schedule, and after being called on by Ms. Trent, Mr.

Henry informed the Board that five projects have been partially completed for a total of 245 dwelling units.

Chairman Stout called on Mr. Jeff Oram for an update on our Single Family Issue.

Mr. Oram stated that the preliminary official statements and other documents were mailed last week to the rating agencies and they are now waiting for ratings. They expect to have the ratings this afternoon and to be able to release the scale tomorrow morning. Numbers they have been running today, based on where the rates are right now, assures a mortgage rate of 10%.

Mr. Wright made a motion that the Agency adopt Simmons as Trustee. Mr. Tommy Edwards seconded; and the Board officially adopted Simmons as Trustee. The Board also officially adopted Verex as the Mortgage Pool Insurer.

Chairman Stout asked Mr. Jack Williams if he had something to offer on Single Family.

Mr. Williams stated that he had a resolution concerning the Agency borrowing \$1 million from Simmons. He asked for a closing on the \$1 million note from Simmons on Friday, and after discussion, the Board adopted the resolution that Mr. Williams showed them. Due to the fact that Chairman Stout will be unavailable Friday to sign the note, the Board appointed Mr. Mahlon Martin as assignee and said the resolution should indicate that Ms. Trent is Acting Director and attest his signature. Mr. Maylon

Martin was appointed Acting Chairman for that day.

Mr. Jack Williams informed the Board that if the bonds sell this week, the underwriters anticipate closing the last week in April; therefore, we would need to have the Board meet again to ratify what the committee does and to adopt the definitive documents. Chairman Stout reminded the Board that the complete Board had voted to accept the proposal from Sullivan to provide an interest 10.5% or under. He stated that he would leave his proxy with Ms. Trent as to what mortgage rate we can accept, optimistically hoping for 10% or under. After Mr. Williams informed the Board that someone would need to sign the Bond Purchase Agreement Friday or Monday, the Board asked Vice-Chairman Hardwicke, Mr. Edwards and Mr. Wright to be available for a conference call concerning this, and Mr. Martin was authorized to sign the Bond Purchase Agreement.

Chairman Stout stated that the Multi-Family Subcommittee heard oral presentations from the underwriters earlier in the day and were prepared to make recommendations to the Full Board this afternoon. He asked Vice-Chairman Hardwicke for the Subcommittee's recommendation.

Vice-Chairman Hardwicke informed the Board that all the proposals were good, and after listening to eight proposals and considering each carefully, the Subcommittee would like to recommend to the Board that Merrill Lynch be the lead underwriter with Stephens, Inc., and T. J. Rainey & Sons, Inc. as locals. The Board

also recommended that the Rose Law Firm be selected as bond counsel. After motions were made and seconded, the Board unanimously approved the underwriters and bond counsel recommended by the Subcommittee.

Mr. Jones was called upon for the Planning Specialist's Report, and he informed the Board that 16 of the 33 counties submitted have been approved through the Washington Office, and those have now been sent to the Treasury. Treasury should let us know something by the end of the month. We are also awaiting reasons why the other counties were not approved by Washington. Ms. Trent stated that if we get those 16 approved through the Treasury, that will bring our total of counties with the first-time homeowners restriction lifted up to 31, and the sales price would be increased by approximately 10%.

Chairman Stout asked for questions or comments from the audience.

Mr. James Carroll expressed to the Board the lenders' appreciation to the Board for working out the difficult situation the lenders were put in formerly. He further asked the Board about the monies in addition to the first \$25 million increment, and Mr Stout stated that no applications could be taken on the additional monies because information has to be submitted to the rating agencies on each increment.

Chairman Stout asked for further business, questions or comments from the Board Members, and there being none, the meeting was adjourned at 3:22 PM.

Charles Stout

Charles Stout, Chairman

Linda D. Trent

Linda D. Trent, Acting Executive Director

Sworn to and Subscribed before me this 19th day of July, 1983.

James H. Hines

Notary Public

My Commission Expires: 7-20-90

Stephens Inc.

April 28, 1983

Mr. Charles Stout
Stout Realty
2333 Washington Avenue
Conway, AR 72032

Dear Chairman Stout:

It is with regret that I must inform you that Stephens Inc. is withdrawing from the multi-family housing issue to which we were recently selected as co-manager, along with Merrill Lynch, Pierce, Fenner & Smith and T. J. Raney and Sons.

Stephens Inc. has had a long and cordial relationship with the Arkansas Housing Development Agency, and it is our desire that this continue. We were among the strongest supporters of the legislation which created the Agency, and have served as managers in every one of the Agency's financings.

It has been our belief that the chief reasons for the splendid success which has been enjoyed by the Agency's bond offerings in the market place have been: (1) conservatively structured programs, (2) competent professional staff, and (3) a strong, independent board of directors which functioned without outside interference by political or other interests. As a result of these factors, the issues of the Agency have always been favorably received, at better than market rates, and the bonds continue to trade extremely well on the secondary market because of perceived Agency stability.

A guiding principle of the Agency from its inception has been the requirement that professional firms, including bond counsel and underwriters, be selected on the basis of merit through written and oral presentations. With exception of the most recent single-family issue, the Agency has seen fit to select only those underwriters who had the most superior combination of credentials which would benefit the Agency, namely, sufficient capital to underwrite, strong sales capability, in-house technical expertise, and the ability to continue to make a market in the Agency's securities in the secondary market.

With this knowledge, Stephens Inc. responded to your invitation to propose as managing underwriter to the multi-family issue. We were very pleased to have been selected as a co-manager and were looking forward to beginning work immediately. In the meantime, subsequent to our selection, the Board decided, without discussion, to add to the underwriting group a firm which did not submit a proposal under the Agency proposal procedures which invited individual firm proposals. Although it is certainly the Agency's privilege to appoint any firm, we would invite you to investigate more carefully whether the added company meets the standards of capital, experience, sales capability, staff service and market support which have been the preference of the Board in all previous issues.

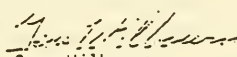
Gene Wilbourn
Page 2

We are concerned that such actions may be an indication of an erosion of the independence of the Board of Directors which, if publicly perceived, can only be received adversely in the market. It is therefore with reluctance that we withdraw from this issue. We are hopeful that this action will not preclude us from participation in future offerings of the Arkansas Housing Development Agency, assuming, the selection is made on merit and experience.

It has been a pleasure to work with you, the Board of Directors, and your excellent staff. If we may ever be of service to you, we're just down the street.

Respectfully submitted,

STEPHENS INC.


Gene Wilbourn
Vice President

GW:sb

cc: Jackson T. Stephens
-AHDA Board
Linda Trent
Bill Clinton

ARKANSAS HOUSING DEVELOPMENT AGENCY
SPECIAL EXECUTIVE BOARD MEETING
4:10 PM

April 19, 1983

The Arkansas Housing Development Agency's Executive Board met on Tuesday, April 19, 1983, in the AHDA Conference Room, at 4:10 PM.

The Board Members present were Mr. Mort Hardwicke, Mr. Tommy Edwards, Mr. George Wright and Mr. Mahlon Martin.

AHDA Staff present were Linda D. Trent, Acting Executive Director; and Midge Pugh, Deputy Director.

Others present were Ms. Johnnie Holcolm of Stephens, Inc.; Mr. Bob Snider of T. J. Rainey & Sons, Inc.; Mr. Jack Williams and Mr. David Menz of Wright, Lindsey & Jennings; Mr. Jim Fowle of Rose Law Firm; Mr. Tom Carter of Collins, Locke & Lasater; Mr. Dabbs Sullivan of Dabbs Sullivan - Division of George K. Baum; and Ms. Carol Matlock of the Arkansas Gazette.

Mr. Hardwicke called the meeting to order at 4:10 PM and informed the Board Members that the Special meeting was called for the Board to take action and officially approve the documentation for the 1983 Single Family Issue which was sold last

week. Mr. Hardwicke then called on Mr. Williams to inform the Board of any changes made in the documentation.

Mr. Williams stated there was a proposed amendment to the Bond Purchase Agreement that the Board needed to consider, and he called on Mr. Menz to discuss that amendment.

Mr. Menz informed the Board that Special Tax Counsels asked that we add in a breakdown between the allocation of original issue discount bonds and the allocation for the other bonds in the 1983 Single Family Bond Issue. Mr. Menz stated they had added to the first page of this the contract to purchase that allocation in the form of a table showing the maturities of the bonds, rather than the original issue discount bonds and the original discount bonds with par value and purchase price. The reason for that is there is a revenue ruling which states the Agency must specifically allocate these discounted amounts so that the purchasers of the original issue discount bonds can have the discount treated properly for Federal Income Tax purposes.

After the Board was informed of the significance of the amendment to the Bond Purchase Agreement and assured that the bond counsel had reviewed it and approved the change, Mr. Hardwicke asked for a motion to approve the Bond Purchase Agreement. Mr. Edwards made a motion concerning same; Mr. Martin seconded it, and the Board approved.

Mr. Williams asked the Board for a ratification of the signing of the documents by Mr. Maylon Martin as Acting Chairman.

Mr. Wright made the motion; Mr. Edwards seconded, and the Board approved.

Mr. Hardwicke called for a motion to approve the Lander's Guide and Servicer's Guide. Mr. Martin made a motion that the aforementioned Guides be approved; Mr. Edwards seconded, and the Board approved.


Mr. Hardwicke then asked for a motion to approve the General Resolution. Mr. Martin made the motion that the General Resolution be approved; Mr. Edwards seconded, and the Board approved. Mr. Hardwicke further asked for a motion to approve the Series Resolution. Mr. Wright made the motion that the Series Resolution be approved; Mr. Edwards seconded, and the Board approved.

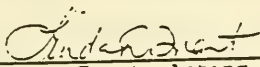
Mr. Williams informed the Board that ~~pre-closing~~ is scheduled for May 2nd in New York and closing May 3rd on the 1983 Single Family Bond Issue.

Upon Mr. Hardwicke's request for further business, Mr. Wright made a motion that Collins, Locke & Lasater be added to the underwriting team for the Agency's proposed 1983 Multi-Family Issue in order to spread it around and include more local Arkansas underwriters on this issue. Mr. Edwards seconded the motion, and the Board approved same.

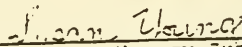
Mr. Jack Williams thanked the Board members for meeting this afternoon on such short notice to take care of this business.

There being no further business, the meeting was adjourned
at 4:15 PM.


Charles Stout, Chairman


Linda D. Trent, Acting Executive Director

Sworn to and Subscribed before me this 14th day of March,
1983.


Notary Public

My Commission Expires: 7-22-90.

MINUTES

ARKANSAS HOUSING DEVELOPMENT AGENCY

BOARD OF DIRECTORS MEETING

February 17, 1983

The Board of Directors of the Arkansas Housing Development Agency met for the regular monthly meeting on Thursday afternoon, February 17, 1983, in the Agency's Conference Room.

Board members present were Chairman Charles Stout, Vice-Chairman Mort Hardwicke, Secretary Robert Hammerschmidt, Tommy Edwards, Betty Walker, Fred Dacus, Mahlon Martin and George Wright.

AHDA Staff present were Linda Trent, Deputy Director of Housing; Vivian Pugh, Deputy Director of Finance; Susan Young, Single Family Housing Officer; Bernie Henry, Multi-Family Housing Officer; Gary Arrington, Multi-Family Management Specialist; Bill Wilson, Fiscal Officer; Randy Jones, Planning Specialist; and Freda Thompson, Executive Secretary.

Others present were George Campbell, Rose Law Firm; Don Christian and Dabbs Sullivan, Jr., Dabbs Sullivan Division of George K. Baum Co.; Peter Nolden and ^{Jeff} Jerry Oram, Blyth Eastman Paine Webber; Michael J. Drake and Thomas Carter Collins, Locke & Laster, Inc.; John Moore and Robert Coleman, Union Modern Mortgage; Susan Finister, Savers Federal Savings & Loan; Melinda Wolfe and Gary Smith, Merrill Lynch; Ron W. Strothers and Patt Greenlee, Commercial National Mortgage Co.;

W. J. Williams, Jr., Wright, Lindsey & Jennings Law Firm; Jewelle Bickford, Citibank; Johnnie Holcomb and Gene Wilbourn, Stephens, Inc.; Bob Snider, T. J. Raney & Sons; James Carroll, Block Mortgage Co.; Charles Henderson, William Johnston and Robert Warendorf, E.F. Hutton Co.; Jim Tom Bell, Dennis Mills and Dale M. Taylor, First National Mortgage Co.

Chairman Stout called the meeting to order at 3:10 PM, and welcomed new Board members George Wright and Mablon Martin. The minutes of the regular meeting of January 6, 1983, the Sub-Committee meeting of January 11, 1983, and the Special Board meeting of January 21, 1983, were approved as written.

Chairman Stout turned the meeting over to Robert Hammerschmidt for the Executive Director's Report. Mr. Hammerschmidt referred the Board to the Planning section of their packets, which concerns the Agency's Resolution asking our Washington Delegation to draft legislation to repeal the Mortgage Subsidy Bond Tax Act of 1980. He explained that this Act imposes certain restrictions which some Lenders believe to be AHDA restrictions. He added that the Council of State Housing Agencies has entered legislation to repeal the Sunset portion of that Act which has been fully endorsed by this Agency and all of our Congressman and Senators; however, this will not help us in our Single Family Program. Within Arkansas, our State Legislature has passed a Senate Concurrent Resolution supporting our Resolution, along with many other organizations and associations in the State. Randy Jones, AHDA Planning Specialist has contacted many other states to get support on

this. Mr. Hammerschmidt stated that a Bill has been drafted in the House by Congressman John Paul Hammerschmidt calling for the repeal of this Act.

Chairman Stout distributed packets compiled by the National Home Builders Association reflecting the economic impact of new single family units financed by tax-exempt mortgage revenue bonds and requested that this study be entered into the Board minutes.

Mr. Hammerschmidt mentioned the problems we have had in the Single Family Bond Issue and the Agency's attempts to find a solution to make the program work. He called on Linda Trent to present to the Board a proposal received by the Agency. Ms. Trent stated that due to VA and FHA interest rates falling below the 12.95% rate of the AHDA bond issue the Single Family Program has become unmarketable and the Lenders cannot recover their 4% commitment fees except by making mortgage loans. Ms. Trent said that after working with our present underwriters who were unable to find a solution, other underwriters contacted the Agency with a proposal that appears to be workable. Ms. Trent then called on Mr. Dabbs Sullivan, Jr., with Dabbs Sullivan Division of George K. Baum Co., to present the proposal to the Board. Mr. Sullivan distributed written proposals to each Board member and stated that this would solve our Single Family bond issue problems and the Lenders could recoup their 4% commitment fees. He briefly outlined the proposal and said the interest rate would be approximately 10% on a fixed rate 30 year mortgage

loan financed by the issuance of bonds, and the money would be available for loans around April 15th. After allowing time for questions and discussion, Chairman Stout recommended that the Board allow the Housing Sub-Committee to have final approval of the composition and breakdown of underwriters in the proposal. Mrs. Betty Walker moved that the recommendation be accepted and Tommy Edwards seconded the motion with the full Board voting aye.

Mr. Hammerschmidt noted that the 1981 Home Improvement Program was 69% complete at this time.

Mr. Hammerschmidt then called on Bernard Henry to report on the proposed Multi-Family Bond Issue. Mr. Henry advised that the Sub-Committee's research on the most attractive and viable type of program to pursue indicates that the FHA Insured Program is the best structure available at this time. Mr. Henry and the Sub-Committee requested the Board's approval to actively pursue this program and authority to accept proposals from underwriters and bond counsel. Mr. Tommy Edwards made a motion to authorize the Sub-Committee to proceed with this program. Mr. Fred Dacus seconded the motion and it was unanimously approved by the full Board.

Mr. Hammerschmidt reported that all 19 projects financed under our Multi-Family Bond Issue were progressing according to, or ahead of, completion schedule.

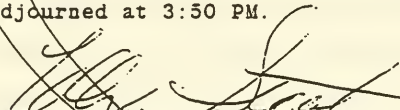
Mr. Hammerschmidt called on Vivian Pugh for a Fiscal report. Ms. Pugh directed the Board's attention to the financial information contained in the Board packet and briefly


reviewed each report.

Chairman Stout called for New Business. Board member Betty Walker stated that due to family reasons it was difficult to attend Board meetings on Thursday afternoons, and requested that Board meetings be held at 3:00 PM on the third Wednesday of each month. Chairman Stout polled each Board member individually and all were in agreement.

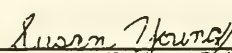
Chairman Stout then presented a plaque to Robert Hammerschmidt, Executive Director, commending him for his outstanding leadership of the Agency from May 1, 1982, through February 28, 1983. Mr. Hammerschmidt planned to leave the Agency at the end of February.

There being no further business, the meeting was adjourned at 3:50 PM.


Charles Stout, Chairman


Robert A. Hammerschmidt, Secretary

Sworn to and Subscribed before me this 17th day of March, 1983.


Notary Public

My Commission Expires: 7-20-90.

MINUTES
 ARKANSAS HOUSING DEVELOPMENT AGENCY
 SPECIAL BOARD MEETING
 August 31, 1983
 3:00 P.M.

The Arkansas Housing Development Agency held a Special Board Meeting at 3:00 p.m., on August 31, 1983, in Room 1143 of the Donaghey Building, Little Rock, Arkansas.

Board Members present were Chairman Charles Stout, Mr. Tommy Edwards, Mr. Mahlon Martin, Mr. George Wright, Mr. Bill Mathis, Mr. James Branyan, Mr. Fred Dabbs, Ms. Betty Walker, Ms. Margaret Davenport, and Mr. Troy Burris.

AHDA Staff present were Mr. C. E. Anderson, Acting Director; Ms. Midge Pugh, Deputy Director; and Ms. Susan Young, Single-Family Housing Officer.

Others present were Mr. Don Christian and Mr. Dabbs Sullivan, Jr., of Dabbs Sullivan Division of George K. Baum & Co.; Mr. Tom Carter and Mr. Michael J. Drake of Collins, Locke & Lasater; Mr. Jack Williams of Wright, Lindsey & Jennings; Mr. Bobby Allison of E. F. Hutton Co., Inc; Mr. John R. Morris of Kidder, Peabody & Co.; Mr. Bob Snider of T. J. Raney & Sons; Ms. M. Susan Hamilton of Thomas McKimmon Securities; Mr. Charlie Crow, Ms. Johnnie Holcomb and Mr. Gene Wilbourn all of Stephens, Inc.; and Mr. Jeffrey J. Orum of Blyth Eastman Paine Webber, Inc.

Chairman Stout called the meeting to order at 3:01 p.m. stating the purpose of this meeting was to select Underwriters for the \$125,000,000.00 Issue. He then called for recommendations of the Review & Recommendation Sub-Committee.

Mr. George Wright, Chairman of the Review & Recommendation Sub-Committee, handed Chairman Stout the following recommendations and fee percentages: Senior Underwriters are Blyth Eastman Paine Webber, Inc. - 25%; Co-Senior are the First Boston Corporation - 20%; and Prudential-Bache Securities - 15%. Co-Managers are Collins, Locke and Lasater - 10%; Dabbs Sullivan Division of George K. Baum & Co. - 10%; T. J. Raney & Sons, Inc. - 10%; and Stephens, Inc. - 10%. Chairman Stout called for a motion to accept the Sub-Committee recommendations. Mr. Tommy Edwards made such a motion; Mr. James Branyan seconded, and the Board approved.

Chairman Stout then called for recommendation of the Review & Recommendation Sub-Committee for Bond Counsel.

Mr. George Wright stated the Review and Recommendation Sub-Committee recommended that the firm of Wright, Lindsey & Jennings be appointed for this Issue. Chairman Stout called for a motion to accept the Sub-Committee recommendation. Mr. Bill Mathis made such a motion; Mr. Tommy Edwards seconded, and the Board approved. Chairman Stout asked any Senior Underwriters present to please consult with the Board as to local firms being used.

At 3:05 p.m. Chairman Stout called for an Executive Session for the Board to discuss selection of an Executive Director.

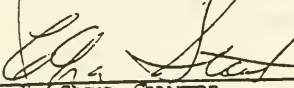
(10 MINUTES TIME LAPSE)

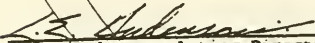
Chairman Stout called the meeting to order again at 3:15 p.m. and called for the Executive Director Sub-Committee recommendation on the selection of the Executive Director. Mr. George Wright presented to the Board the Sub-Committee recommendation of Mr. Wooten Epes. Chairman Stout called for a motion to accept the Sub-Committee recommendation. Ms. Margaret Davenport made such a motion; Mr. Bill Mathis seconded, and the Board approved.

Chairman Stout expressed appreciation to Mr. C. E. Anderson for his outstanding work as Acting Executive Director until such time a new Director could be named.

Chairman Stout stated that a Public Hearing would be called at a later date to structure the up-coming Issue.

There being no further business before the Board, Mr. Wright made a motion to adjourn; Mr. Tommy Edwards seconded and the meeting was adjourned at 3:25 p.m.


Charles Stout, Chairman


C. E. Anderson, Acting Director

Sworn to and Subscribed before me this 5th day of January, 1984.


Notary Public

My Commission Expires: December 12, 1991

BOND ISSUES 1978 TO 1983

Revised: 08-Oct

YEAR	AMOUNT	TYPE	UNDERWRITERS	BOND COUNSEL	UNDERWRITERS COUNSEL	AUTHORITY'S COUNSEL
1978 S	13,000,000	Single Family	EF Hutton Stephens I. J. Raney	Rose	Kutak, Rock	
1979 A	75,000,000	Single Family	EF Hutton Stephens I. J. Raney	Rose	Kutak, Rock	
1979 A	100,000,000	Single Family	EF Hutton Merrill Lynch Stephens I. J. Raney	Rose	Kutak, Rock	
1980 A	110,000,000	Single Family	EF Hutton Stephens I. J. Raney	Rose	Kutak, Rock Friday	
1980 A & B	19,600,000	Multi-Family	EF Hutton Stephens I. J. Raney	Friday	Kutak, Rock	
1981 A	9,200,000	Multi-Family	Stephens I. J. Raney	Kutak, Rock	Rose needed	
1981 A	16,000,000	Multi-Family	EF Hutton Stephens I. J. Raney	Friday	Kutak, Rock	
1982 A	700,000,000	Single Family	EF Hutton Stephens I. J. Raney	Friday	Kutak, Rock	
1982 A	153,375,000	Multi-Family	EF Hutton Stephens I. J. Raney	Friday	Kutak, Rock	
1982 S	8,220,000	Multi-Family	EF Hutton Stephens I. J. Raney George K. Baus	Friday	Kutak, Rock	
1983 A	26,265,000	Single Family	Prineas & Co. Stephens I. J. Raney George K. Baus Lasker	Bright, Lindsey	Rose	

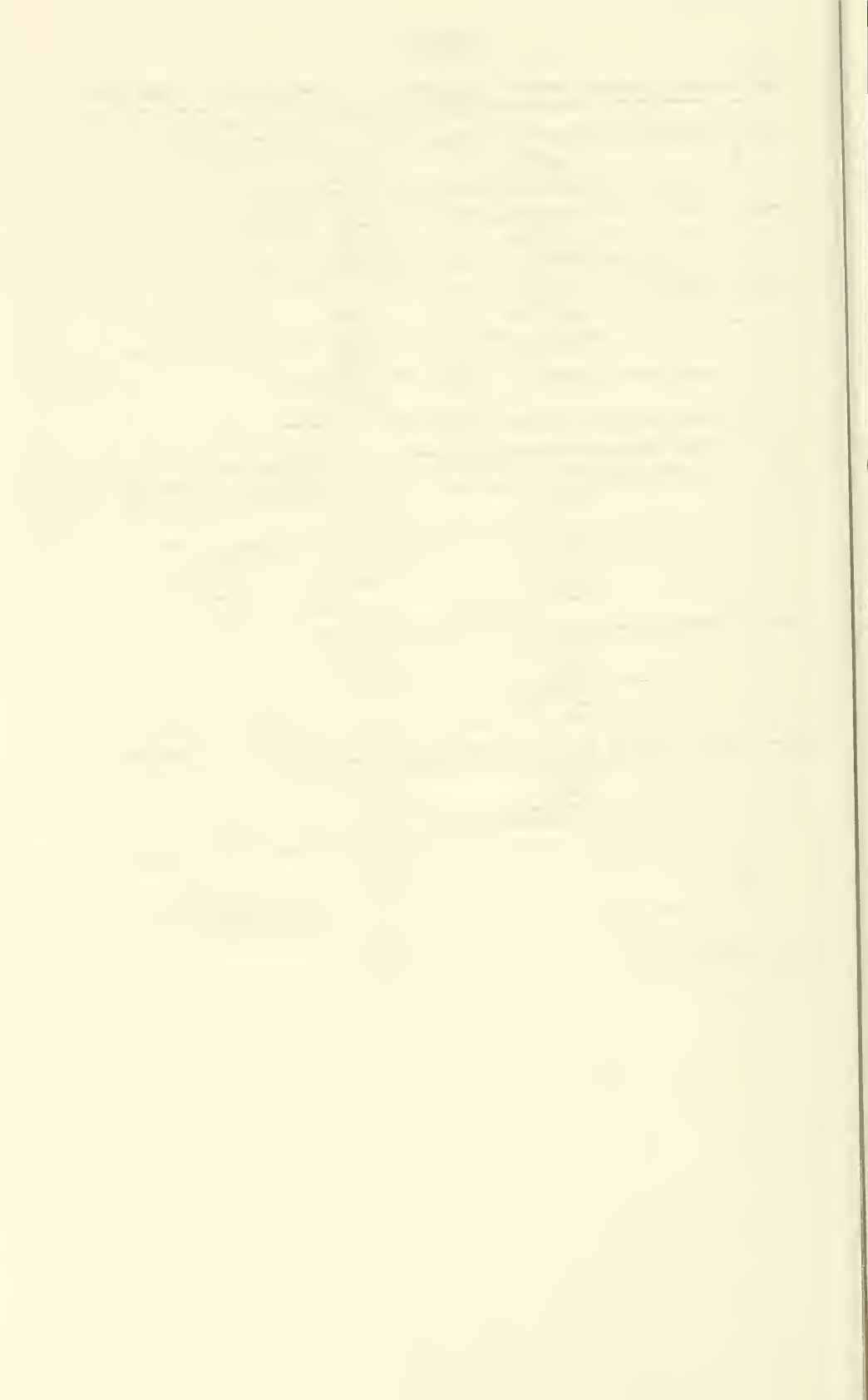
DKSN026126

YEAR	AMOUNT	TYPE	UNDERWRITERS	BOND COUNSEL	UNDERWRITERS COUNSEL	AUTHORITY'S COUNSEL
1983 B	50,000,000	Single Family	Prudential T. J. Ranney George E. Baum Lisater	Wright, Lindsey	Rose	
1983 C	83,500,000	Single Family	Prudential First Boston Prudential-Bache Stephens T. J. Ranney George E. Baum Lisater	Wright, Lindsey	Rose	
1983 D	40,125,000	Single Family	Prudential First Boston Prudential-Bache Stephens T. J. Ranney George E. Baum Lisater	Wright, Lindsey	Rose	
1983 A	3,435,000	Multi-Family	George E. Baum	Wright, Lindsey	Rose	Reese
1984 A	104,000,000	Single Family	Prudential Chase Manhattan Edward D. Francis Stephens T. J. Ranney George E. Baum Lisater	Wright, Lindsey	Rose	
1985 A	175,000,000	Single Family	Prudential Citicorp Herrill Lynch Stephens T. J. Ranney George E. Baum Lisater	Wright, Lindsey	Rose	
1985 B	22,000,000	Single Family	Prudential Citicorp Herrill Lynch Stephens T. J. Ranney George E. Baum Lisater	Wright, Lindsey	Rose	
1985 C	11,094,864	Multi-Family	Herrill Lynch T. J. Ranney George E. Baum Lisater	Rose	Wright, Lindsey	
1985 D	8,448,794	Multi-Family	Herrill Lynch T. J. Ranney George E. Baum Lisater Stonham First	Rose	Wright, Lindsey	

DKSN026127

YEAR	AMOUNT	TYPE	UNDERWRITERS	BOARD COUNSEL	UNDERWRITERS COUNSEL	AUTHORITY'S COUNSEL
1983 AI	3,610,000	Multi-Family	Stephens I. J. Raney George E. Baum Lasater	Rose	Wright, Lindsey	
1983 C	4,475,000	Multi-Family	Merrill Lynch I. J. Raney George E. Baum Lasater	Rose	Wright, Lindsey	
1983 D	10,373,327	Multi-Family	Merrill Lynch I. J. Raney George E. Baum Lasater Simmons First	Rose	Wright, Lindsey	
1983	3,700,000	Industrial Dev.	Stephens I. J. Raney	Friley	None needed	
1983	2,750,000	Industrial Dev. Private Placement		Mitchell, Williams	None needed	
1983	750,000	Industrial Dev. Private Placement		Wright, Lindsey	None needed	
1983 A	22,500,000	Community Dev.	Stephens I. J. Raney	Rose	Seividge, Hicks	Wright, Lindsey
1983 A	10,550,000	Single-Family	Stephens I. J. Raney George E. Baum Lasater	Wright, Lindsey	Wright, Lindsey	Rose
1984 AI	23,300,000	Single-Family	Pisonebber Merrill Lynch Rosenst Stephens I. J. Raney George E. Baum Lasater	Wright, Lindsey	Rose	
1984 A-D	148,000,000	Community Dev.	Goldman Sachs First-Boston Stephens I. J. Raney George E. Baum Powell & Satterfield	Orlick, Herrington	Hawkins	Wright, Lindsey

DKSN026128



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION

TUESDAY, MAY 7, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato, (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. We have a number of announcements to make. There has been a great deal of speculation with respect to the witnesses and who they will be, and what we will be doing in the next several weeks. The Committee will continue its hearings on the Arkansas phase of the investigation. We will be concentrating our efforts in terms of getting as many of those facts as we possibly can.

There are a number of outstanding questions relating to the substance of the billing records and the circumstances surrounding their disappearance and their discovery. In an effort to apprise the Committee about these unresolved questions and the Committee's efforts to find answers, I have asked Counsel to make a presentation and to attempt to answer any questions that the Senators may have concerning the issue and the Committee's answers to date with respect to these billing records.

Mr. Chertoff will make a presentation and indicate what we have done and the number of depositions or interrogatories that we have taken. As we said we were going to keep these in confidence as it relates to all of the people who were asked whether they had any knowledge, but we have gone through a whole number of them and we will make our report public at this time.

The Committee has agreed—Senator Sarbanes and myself—to the issuance of subpoenas to David Hale. These subpoenas seek deposition testimony from Mr. Hale on May 20th and hearing testimony on May 22nd.

The Committee has not reached an agreement yet on a subpoena for David Watkins' testimony, and also with respect to a subpoena

for certain records of the Bank of Kingston. I believe that was the predecessor to Madison Savings & Loan, and there are some limited records that we seek there. Hopefully, Counsels will be able to come to an accord. If we can, we will announce the issuance of them tomorrow. If not, we may have to take up whatever is unresolved with respect to voting for or against the issuance of those subpoenas.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, first of all, I think the Bank of Kingston was not a predecessor to Madison Savings & Loan, just so we keep that clear on the record. I mean, that is an important point.

The CHAIRMAN. It was owned by Mr. McDougal, Senator.

Senator Sarbanes. Well, I understand, but—

The CHAIRMAN. If we are going to start splitting hairs, now let me say this to you, we are either going to get these records or not. If we cannot agree to it, and we have attempted to work these things out, then we will meet tomorrow for the purpose of considering issuing subpoenas. They are relevant and we are not going to be deterred. I hope we can do this in a manner in which we have worked out most of the matters, but make no mistake about it. We are going to consider it, one way or the other.

Senator SARBANES. Well, let me say, I hope we can work it out. My understanding is we are very close, but I again want to make the point that the Bank of Kingston is not a predecessor to Madison Savings & Loan.

The CHAIRMAN. We will go through this tomorrow, but the Bank of Kingston was an affiliate of Madison Guaranty. Mr. McDougal owned, wholly, this bank. He had the controlling interest in both of these banks.

Now it is not a question that we are looking to subpoena records of some institution that has no connection with Madison Guaranty, that we just dragged it out of the air. I think it is rather disingenuous to suggest that maybe we are looking for some records that have no connection. That is not the case.

I have attempted to steer us in a course that would avoid controversy, but I'll be doggoned if I am going to sit here and have you attempt to split hairs with me when we know, and we have gone through this repeatedly and have attempted to settle this thing. If we cannot, then we will take up the issue with respect to whether or not this Committee should issue a subpoena for these records.

Senator SARBANES. Mr. Chairman, no one is trying to be disingenuous with you. Far be it.

The CHAIRMAN. OK.

Senator SARBANES. I am perfectly happy to discuss this matter. If we are going to discuss it, we are going to have to do it in a calm, rational way with some relationship to the facts.

The CHAIRMAN. Senator, there is a great deal of relationship to the facts. You would have people believe that there is no connection when I said this was a predecessor. The fact is McDougal owned this bank prior to taking over Madison, and he was the majority stockholder, and the fact is that there are records that we are enti-

tled to see. I do not know what those records will produce, but it is our attempt to get the facts and finish this.

I do not think this should have been brought out as a public issue. The fact is that the clock is ticking. We are running into one of those situations again where on the one hand we say we want to wrap this up, and on the other hand we have to have the ability to get this information so that we can get all the facts and make a determination.

Senator SARBANES. We are trying very hard, Mr. Chairman to work with you in order to wrap it up, I must say. Do we have any notion of what the hearing schedule will be for the week after next?

The CHAIRMAN. Today we were supposed to have Ms. Thomases, but her lawyers had a problem with scheduling. It was at their request and insistence and our attempt to accommodate them, and I ask that the letter be put into the record from her lawyers, that we put this matter over until next Tuesday.

We run into problems, otherwise, Susan Thomases would have been here. We are attempting to work with both the Minority and with the schedules of other people—the witnesses and their attorneys. I believe that we have a tentative schedule, and it includes Ms. Thomases who is supposed to be here Tuesday. If some exigency or problem develops and she is not able to be here, that will mean that we have an opening Tuesday.

Similarly, I point out that we have been discussing the question of Mr. Watkins and the Bank of Kingston now for at least 10 days. There comes a point in time, as the saying goes, to fish or cut bait. Either we are going to have to come to an agreement or make a determination to vote out subpoenas. I would hope that we can. But so far, notwithstanding the good efforts on both sides, we have not been able to resolve this.

Senator SARBANES. Yes, hopefully we can.

I would note that we joined in the subpoena to Ms. Thomases. While I was not involved in the decision to postpone her testimony, I understand that the Chairman was responding to an appeal from her lawyers which I have not seen, but in any event, obviously, I think the Chairman has to show some understanding of the situation in which witnesses find themselves. So I do not really quarrel with that. The present plan, I take it, is to bring her in next Tuesday, May 14th?

The CHAIRMAN. That is correct.

Senator SARBANES. Do we know what the schedule will be for the rest of next week?

The CHAIRMAN. Well, the staffs are working to accommodate that, Senator. They are trying to do as many of these by deposition so that we will save time.

Next Tuesday, we have Susan Thomases on the first panel. We have Charles Campbell, former Vice President of the Security Bank; William Fisher, the former President and CEO of the Security Bank; and Frank Oldham, the former Loan Officer of the Security Bank of Paragould, I guess that is, on the second panel.

On Wednesday, we will have two panels. On panel one, Loretta Lynch and Jim Blair; and on panel two, Bruce Erickson and Jay Stevens, Pillsbury Madison & Sutro.

On Thursday, we have John Latham, David Knight, Gary Bunch, and Bill Henley. I believe that this information has been shared with the Minority. As a matter of fact, I see a memo that may have just been written yesterday or today.

Senator SARBANES. I was just looking at it.

The CHAIRMAN. The schedules are attempting to accommodate, where we believe it is appropriate, witnesses and their attorneys.

It was Ms. Thomases' attorney who asked us, notwithstanding the fact that a subpoena had been issued, to adjourn this matter in order to accommodate them and we did. So there will be some changes as we go along. There is no doubt about it.

Senator SARBANES. But essentially we've set the hearing schedule now for this week and next week?

The CHAIRMAN. Essentially, yes. Now if there is an opportunity to advance or bring in other witnesses, or if we find that it is not necessary, obviously, we will act accordingly; and we have been advising the Minority.

Now, I will say again, I hope that we can come to an agreement as it relates to the issuance of subpoenas getting the records of a bank that we have every right to see. It is a bank that James McDougal controlled. We have discussed these records now for a period of time.

Senator SARBANES. Mr. Chairman, the other point I want to—

The CHAIRMAN. These are files that Webb Hubbell took from the Rose Law Firm. If Hubbell had not taken the files, we would not have them. The relevance is that we are interested in these files that Hubbell took. I cannot understand why we cannot come to an agreement to issue these subpoenas.

Senator SARBANES. We will figure that out later today, I assume.

The CHAIRMAN. When the Senator starts to say, well, this was not the predecessor of the Madison Bank that leave us in a position where people would think that maybe there is no relevance to this. There is, and we want to wrap this up as quickly and as thoroughly as possible. We need these files and though they may prove to be nothing, it is still our job to get this information.

Senator SARBANES. Now, Mr. Chairman, I indicated to you in a conversation last week that the Minority was prepared to participate in hearings the week of May 27th, which I understand is going to be a recess week for the Senate, if the Chairman thought hearings were necessary that week in order to hold to our schedule, and I just want to repeat that here this morning.

I understand the current plan in the Senate is the week of May 27th, which is Memorial Day week, they plan to recess. I do not know whether hearings will be necessary in order to meet the June 14th date, but if so, we are prepared to hold hearings that week. I do not know what the Chairman's view of that is at this point, but I just wanted to add that to the discussion.

The CHAIRMAN. I have indicated to the Senator, if it is necessary so that we can dispose of all of our work prior to the agreed date to terminate public hearings, I would certainly think it is incumbent upon us to use that time, and if it is necessary we will hold hearings during that week.

I have stated previously, it is the intent of the Chair, to do our work thoroughly, comprehensively, fairly, and in an honest attempt

to meet the deadline that the Senate has imposed. If we can finish earlier, I think it would be to our advantage in case we have additional developments, or new events turn up, so that we do not have to ask for a continuance on the time; we can do it within the time allotted.

Witnesses are being deposed and information is continuing to be gathered in an attempt to meet that schedule and deal with it in a way that leaves us sufficient time to write our report.

Senator SARBANES. Are you going to turn to Mr. Chertoff now?

The CHAIRMAN. Yes.

Senator SARBANES. I have one final point I would like to discuss.

Mr. Giuffra informed us yesterday that he had a discussion with Mr. Olsen, Mr. Hale's counsel, who said that Mr. Hale intended to assert his Fifth Amendment right, as I understand it. That is the report we received from Mr. Giuffra. If that is the case, I think we should ask Counsel to research the appropriateness of such a claim and hopefully work could begin on that on the part of Counsel, working together both Majority and Minority Counsel.

The CHAIRMAN. I will ask both Mr. Chertoff and Mr. Ben-Veniste to research whether or not a claim, an assertion that the Fifth Amendment will be interposed, if that is sufficient to thwart a subpoena, or the appearance of a witness; whether or not the witness has to come in and plead the Fifth or he can make that assertion through his attorney. I guess that is the question?

Mr. BEN-VENISTE. The issue really is, since Mr. Hale has testified publicly for some 9 days in Little Rock, one wonders how at this point he would successfully assert a claim of privilege against testifying before this Committee.

It is not a question of whether a witness who appropriately asserts a Fifth Amendment privilege should be brought before the Committee. I would not advocate such a position. But, whether—

The CHAIRMAN. To extend a waiver?

Mr. BEN-VENISTE —the assertion is appropriate under the circumstances here to avoid appearing before our Committee.

Senator SARBANES. Why don't we have Counsel discuss that?

The CHAIRMAN. That is a very interesting question. I think Counsel should review that and possibly even take it up with Senate Legal Counsel as it relates to any precedents that may or may not have been established so we can get a determination.

Mr. BEN-VENISTE. We are going only on what Mr. Giuffra reports that Mr. Olsen told him. He has not made that assertion publicly.

The CHAIRMAN. Sure.

Mr. BEN-VENISTE. It may be just something he was thinking of. Perhaps Mr. Giuffra could clarify it.

The CHAIRMAN. Indeed, if this is raised, I think it would be wise for us to get ahead of the curve. He may or may not choose to assert that privilege, but we will do the research on it.

Are there any other Senators who would like to be heard from at this time?

[No response.]

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, I was requested to report to the Committee on where we are with a series of questions that we have been pursu-

ing both in public hearings and in private depositions and through private interrogatories relating to what people generally know as "the billing records."

The billing records are large computer printouts that indicate the billings that the Rose Law Firm submitted to Madison Guaranty Savings & Loan for work done between April 1985 and about June 1986. We know from prior testimony before the Committee, these were under subpoena not only by this Committee but also by the Independent Counsel and the RTC.

The Committee will recall that this issue was a matter that a great deal of time was spent on last fall. I know Senator Bennett will recall, for example, that he persistently raised with Ms. Thomases and with some other witnesses the question of exactly what work was done, and were there any records of the work.

I remember Mr. Hubbell said at one point to the Committee: "You know, I wish I could answer these questions; what you really need are the billing records."

Then, after having raised the hue and cry for a couple of months, one day in January the Committee found, almost literally on its doorstep, a delivery of these billing records.

Ms. Huber was here and testified she had seen the records in the early part of August of last year on a table in the Book Room in the residence of the White House. She had taken possession of them. They were out in the open on top of the table. She described that as a very private area of the residence. She said she was under the impression she was supposed to file them. She took possession of them. She took them down to her office, and in early January when she saw them again she realized that this would be potentially something that had to be turned over pursuant to the subpoena and she called her lawyer and other lawyers, and they were then furnished to us.

Now the questions that we wanted to pursue was how did they get to the Book Room in August and who had them? This bears on two questions.

First, if someone who knew about the subpoena and was subject to the subpoena for these records was aware of where they existed, if the records were in the control of someone who was subject to subpoena and they were not turned over, that obviously would raise questions concerning whether someone had obeyed the subpoena. That is of concern to the Committee as well as to law enforcement.

Second, there were a series of questions—some of them under oath; some of them not under oath—that had been put to various individuals in connection with the work that was done by the Rose Law Firm for Madison Guaranty Savings & Loan which were called into question by the billing records.

If those billing records were available to people before the time, or at the time they were answering the questions, there is a natural issue that arises about why did someone say something that the records contradicted. If they had them, or had seen them before they answered the questions, they would know the answers the records contained. Let me give you by way of some examples some of what I mean.

There were questions on a number of occasions, both in the press and more importantly, at least on one occasion, from the RTC and from the FDIC. Those are the Federal regulators who were investigating this matter about the contacts that Mrs. Clinton had as a lawyer for the Rose Law Firm on behalf of McDougal's bank, McDougal's savings and loan, with Beverly Bassett Schaffer who was then the regulator in charge of savings and loans.

The Committee will recall that as of April 1985, the Rose Law Firm began representation of McDougal's savings and loan. The very first matter they undertook was an effort to get approval to issue preferred stock. There were documents that everybody had that showed that the regulator, Ms. Bassett, had written to Hillary Clinton on this issue.

Yet, when Mrs. Clinton was asked to respond to interrogatories in early 1994 by the RTC that was investigating this, she said at page 41 of her interrogatories:

I was not involved in any meetings with State regulators on these matters. I may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding S&L matters. I do not remember to whom I spoke.

Now when we got the records, we discovered that there was, in fact, a very clear record of a conversation between Mrs. Clinton and Beverly Bassett because she had recorded it on her time, and it had turned up on the billing records. Listed in the entry for April 29, 1985, is a 1-hour timeframe which has "telephone conference with B. Bassett, Securities Commissioner and telephone conference with R. Massey," who was, as we know, the young lawyer, the first-year associate lawyer working on this matter. This record is inconsistent with the notion that there was an inquiry simply to determine to whom this matter should be addressed.

The question is: Had these records been seen by Mrs. Clinton before the time she indicated that she did not remember to whom she spoke? Obviously if they were seen by her before, then the question is: Why didn't she remember what she had seen and what had evidently been drawn to her attention by Mr. Vincent Foster's markings on the billing records, why didn't she use that to answer the question? Why didn't she have a recollection of something that had been directed to her attention by Vincent Foster—namely, her records of that call with Beverly Bassett.

The records also turn out to be important when we evaluate the statements that Mrs. Clinton made concerning how much work and how much day-to-day supervision she had about the work for Madison Savings & Loan.

She indicated to the RTC, for example, that her knowledge of the events concerning this entire representation is largely secondhand, since her contemporaneous involvement in the representation was minimal and Mr. Massey primarily handled the matter. She said again in an affidavit to the Federal Deposit Insurance Corporation:

I was not involved in the day-to-day work on the project. My knowledge of the events concerning this representation has been largely derived from a review of the relevant documents—

If she had reviewed this document before she gave that answer, she would know that, in fact, she spent a little over 6 hours on the preferred stock issue; and that, in fact, her total representation of

Madison Guaranty Savings & Loan as reflected in her billing records was substantially more than any other lawyer in the firm.

In fact, over half of all the hours billed by all Rose Law Firm lawyers for Madison Guaranty Savings & Loan work during this period were billed by Hillary Clinton. She billed 52 percent of the total hours, which is substantially more than the next lawyer who worked on these things.

So again the billing records, if they were in her possession before and she had seen these notations on the records before she gave these answers, it raises a question of why she answered as she did.

This comes up again with respect to the issue of Castle Grande. Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes.

Senator SARBANES. As I understood it, we were going to examine where these records have been and who has handled them. I can understand Mr. Chertoff wants to lay out his various hypotheses with respect to Mrs. Clinton, but either we ought to develop these at hearings with witnesses, or he ought to put it in his final report. But I am not quite clear why we are going to spin through all of this here this morning.

As I understood it we were going to get a report on the inquiry with respect to the records. Now, we are getting sort of hypotheticals on the basis of Mr. Chertoff's interpretation of various matters in the record, which is a very different thing.

The CHAIRMAN. I am going to permit Mr. Chertoff for the next 5 minutes to move through this as it sets the groundwork for the importance and the relevance of these billing records.

It is not a question of any records at any time that appeared, but there are some relevant issues. Mr. Chertoff, I am going to ask you to move through it and then make a report as to what the Committee and the staff have done to ascertain who may have had access to these records, who we have eliminated, and what the status is.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The reason I am laying out the background is because part of the analysis the Committee has to undertake in trying to decide who handled the records and who had them in their possession is to understand to whom they would have been significant.

To pick an example, someone at one point threw out the suggestion that construction workers might have had access to the records. But when you look at the records and you see what they are about and whose activities they concern, it is very unlikely that construction workers would have an interest.

Even with respect to some of the people who we have seen in the hearings who have testified, when you look at the nature of the records, what is intrinsic to the records, you understand that some of these people would really not have a particular interest or even an understanding of the significance of the records.

There is really only a limited number of people who, by virtue of their background, would have been able to interpret the records, would have understood the notations on the records, would have known what the items referred to in the records, and therefore would have had a motive to handle the records. That is something the Committee is going to have to consider.

Senator SARBANES. Are you precluding handling the records without having a motive?

Mr. CHERTOFF. I think it is always possible, Senator, that someone could handle something unwittingly.

Senator SARBANES. OK. That's all I wanted to know.

Mr. CHERTOFF. The likelihood of someone doing that.

It is far more likely someone would be in possession of records and handling records and looking at records they cared about than it is to someone with no conceivable interest in the records would have been pouring through them. I mean, anything is possible in life, but like anything else, whether it be this Committee or a court, we all deal with what is likely and probable.

Just to give you one last example, and I think it is particularly pertinent with respect to the Bank of Kingston issue, one of the critical questions that was raised early on was how, in fact, did this representation begin? Why was it that the Rose Law Firm was retained to handle matters for Madison Guaranty Savings & Loan?

We heard a witness I think who testified that typically they used Jim Guy Tucker's law firm to do their work. And yet in April 1985, we turn up with work being performed by the Rose Law Firm.

I think it is public knowledge now that there is a difference of opinion about how that started.

The billing records also contain, interestingly, a copy of a bill that was for the old Bank of Kingston, or Madison Bank and Trust. That is part of these billing records that were found in the Book Room that had not been available previously. This indicates that, in fact, the bill had been paid as of the date on the bill. Then there is a notation in Vincent Foster's writing, "HRC, I believe there was a subsequent bill."

These records also bore on the question of whether, in fact, it was true that the reason Mrs. Clinton got involved was because there was a problem with an unpaid bill, or whether the bill had been paid. These billing records showed that the people who had them in their possession were very interested in exploring that question.

Bearing that in mind, let me tell you how we proceeded to analyze the questions that we have to address and who might have handled these records.

There are basically five questions in terms of handling the billing records. We have tried to work our way through each of them and narrow down the field of people who might be involved.

The first question is: Who removed the records from the Rose Law Firm in 1992? These are, after all law firm records. Mr. Clark, the head of the law firm, didn't remember. No one remembered giving permission to have the records removed, still less to have them disseminated outside of Little Rock and taken to the White House.

The question was whether anyone handled the records in Little Rock during the campaign. That is certainly an important question in order to determine how they wound up in the Book Room. Then we wanted to find out if we could determine who handled the records in Little Rock and who took them to Washington. If we could determine that, we wanted to know who stored the records in Washington, and where they were until the summer of 1995, when they reappear on the table in the Book Room.

And finally, maybe the bottom line question is who placed the records in the White House Book Room?

Let me tell you where we are with respect to each question.

First, who removed the records from the Rose Law Firm in 1992? Well, Mr. Hubbell was asked this question under oath and he indicated that he had not removed them from the Rose Law Firm. Obviously, we cannot ask Mr. Foster. Mr. Foster, though, there was testimony, had at least gone to some people in the firm and sought to obtain some records, although not billing records.

We also know, and this is part of the second question, that Vince Foster and Webb Hubbell both had the billing records at some point in time during the campaign in 1992. We know that because Mr. Hubbell testified that he had spoken to Mr. Foster about them in the campaign.

He identified, and others identified, Mr. Foster's handwriting on the records that appeared to be notes to "HRC" directing her particular attention to certain parts of the record. And we know this because we have Susan Thomases' notes of her conversation with Hubbell and the campaign where she made a reference on the side saying, "he has the billing records."

In fact, Hubbell was describing to Susan Thomases over the telephone, as she testified and as her notes bear out, the content of the records and the significance of the records. So that we have at least established, I think, that two people had those records in their possession and custody in Little Rock during the 1992 Presidential Campaign. Ms. Thomases testified under oath that she had never seen the records; she had merely heard about the records.

Now the records appear 3 years later. Who transported them to Washington? We asked this question of several people. Carolyn Huber denied seeing them before they appeared in the Book Room. We asked Susan Thomases and she denied in her testimony having seen the records or dealt with them physically in 1992, so she did not transport them. Mr. Hubbell testified under oath that, although he collected a whole series of documents in early 1993, from the Rose Law Firm which he simply removed without asking permission, the billing records were not among them. His last recollection of the billing records was that he had given them to Vincent Foster, and he swore that he had never seen them again until they were presented this year in the context of his deposition and his testimony.

Mr. Hubbell's testimony takes him off the board as someone who transported the records. Betsey Wright, when she was up here, indicated that she had not been responsible for transporting these records. She identified the records she did handle that she had filed, and she had never seen these records and had not been responsible for getting them to Washington. The last person we know who had the records, if we accept Mr. Hubbell's testimony, was Vincent Foster, and we cannot ask him.

That takes us to the question of who stored the records until they were on the Book Room table in 1995? Carolyn Huber and Susan Thomases denied having any knowledge of the records before they were produced—in the case of Ms. Thomases before they were produced here; and in the fact of Ms. Huber before she saw them in the Book Room.

Webster Hubbell denied seeing the records in Washington even among those records he kept in the basement until he saw them here in the Committee room. In fact, what Hubbell said was he had turned all the records that he had in his basement over to the President's lawyer in late 1993. The President's lawyers did not turn these records over, and Mr. Kendall and Ms. Sherburne, who were the President's lawyer and the White House lawyer, both said they had not seen the records until 1996.

Of the people who we know had some contact with these records, Mr. Foster is really left because Mr. Hubbell, Ms. Thomases, and Ms. Huber have taken themselves off the boards.

Then the question is: Who placed the records in the White House Book Room? In order to answer that question we have to answer the question of who had access to the Book Room. It is a kind of a classic process of elimination.

We knew from Carolyn Huber's testimony, and she was very firm on this under oath, that she discovered these in early August 1995, last year, which is less than a year ago. And for purposes of making an analysis, we broadened the timeframe. We started at about July 20 and we ended August 10. We asked ourselves, and we asked ultimately the White House, who were the conceivable number of people who had access to the Book Room?

Now the testimony of people like Ms. Huber is that that is not a room which is generally accessible to the public, or even to people who are in the residence for ceremonial events. It is a place where the Clinton's keep books, and gifts, and things of that sort. They have some personal files there, and it is apparently the way you get into the Exercise Room. So it would be accessible to guests.

And putting aside the question I raised earlier, which was who would logically be looking at these, we figured we would take the broadest possible approach.

The White House had put out the notion that there were people working in construction in the residence; there were all kinds of guests in the residence. These figures are statistically thrown out as if to suggest that there were hundreds of potential people who might have handled the records and put them in the Book Room.

So we proceeded to try to whittle that down. We accepted the fact that the President and Mrs. Clinton's daughter and her friends obviously had nothing to do with this. We didn't pursue that.

We went to the residence staff. We, in fact, had the Head Usher and the Assistant Head Usher here to testify. And based on their testimony and other investigation, and in particular the fact that members of the residence are under strict instruction on pain of removal that they must not disturb papers, put them down or take them up, look at them or go through them, we were satisfied that it was extremely unlikely that someone in the residence staff, meaning ushers or maids, would have been responsible for putting the records there, or looking at the records, or maintaining the records there.

Then we addressed the question of construction workers. The testimony we got on the construction workers is that all construction workers and outside contractors who work in the residence are escorted by the Secret Service or the Usher's Office at all times. They are under strict instruction that they can't touch or remove any-

thing within the residence; and again, they would be sanctioned if they did it. Common sense probably would have led us there in the first place, but we pursued it and the facts support common sense.

The CHAIRMAN. Did you question the construction workers by interrogatories or any other way?

Mr. CHERTOFF. I think we relied principally on the testimony of the Secret Service and the Ushers' Office, because they indicated that the construction workers are not allowed to be by themselves. There is always supervision by the Secret Service or by the Ushers Office. They assured us it would not be permitted to have somebody putting documents down, removing documents, or disturbing documents. I have to say, based on what I said earlier, as a matter of common sense it is hard to imagine a construction worker that would be in possession of these records or would look at them, or would leave them.

Then we looked at the question of approximately 55 public officials who visited within the residence during this period of time.

Now, I want to say that the records we got from the White House do not monitor movement within the residence, the second and the third floor. They tell us who goes into the residence, but they don't tell us who moves between the second and third floor. There are, as we understand from the White House, various rooms particularly on the second floor that are kind of ceremonial rooms. There are functions, or quasi public, or public functions there. Although it seems unlikely that people on the second floor would go up to the third floor, we thought we had to look at everybody who came into the residence because we could not narrow it further.

We did not question the public officials. We did send them interrogatories. It seemed to us unlikely, and so unlikely as to be beyond any doubt, that the mayors or the president of a foreign country would be handling the billing records any place, let alone in the Book Room. Likewise we did not question Cabinet officials or people who clearly would not have had a reason to look at them.

Then we looked at residence guests. There were various people who were guests in the residence and we wanted to proceed discretely. We did not want to disturb anyone's privacy.

We sent interrogatories out and we received negative responses from just about everybody. There were two individuals from whom we did not receive responses who are members of the President's personal family. Other than those two, we received responses from every guest indicating that they had not any knowledge of, nor had seen nor handled the records.

That left a category of what we have described as "insiders." I do not want to use that as a pejorative term, but these are people who—they are not guests in the residence, overnight guests—they are people who have a regular working relationship or dealing with the Clintons, either those who have had it in the past or who have it currently and who were in the residence area. These are people whom we either deposed or submitted interrogatories to. Of the insiders, there are only two we have not yet specifically questioned.

One is Ms. Thomases, although Ms. Thomases has previously sworn that she did not see these records before, so I think it is pretty predictable what her answer will be; and Bruce Lindsey who we are scheduled to depose in the very near future.

That indicates where we are with respect to people having access to the Book Room. Other than two members of the President's family who have not answered the interrogatories, and the two insiders—and again we are just using that term for convenience.

The CHAIRMAN. We could say, "people who had more or less regular access to the White House."

Mr. CHERTOFF. Or we can say, "people who had working relationships with the Clintons as opposed to personal relationships."

Other than two of those from whom we have not gotten formal answers, and I think from Ms. Thomases we essentially have, I think we have on the record evidence that none of the 206-odd-people who were in the residence during that period of time handled the records, saw the records, or knew anything about the records during the period we have examined. That is the current status of where we are with the billing records.

Senator SARBANES. To whom were the interrogatories sent? The residence guests? That category?

Mr. CHERTOFF. They were sent to residence guests. Some were sent to people that we described as people who have a working relationship with the Clintons; people who I think have more regular access to the residence, or who we were deposing anyway, we generally put the question by supposition. Senator, this is something both sides participated in.

Senator SARBANES. Do you know how many interrogatories were sent on this issue to how many people?

Mr. CHERTOFF. I believe a total of approximately 60 people received interrogatories. I think we generally sent a standard interrogatory with four parts or four questions.

Senator SARBANES. How many depositions on this issue?

Mr. CHERTOFF. I do not know that I can tell you off the top of my head, but I would say that the construction workers we did not depose, obviously, except for the Secret Service.

Senator SARBANES. Or interrogate; right?

Mr. CHERTOFF. Or interrogate. We relied on the—

Senator SARBANES. And the same thing with the residence staff?

Mr. CHERTOFF. We relied upon the testimony of the Secret Service and the Ushers' representative. So I think we took three depositions or four depositions that would have related to that.

Senator SARBANES. The same with dignitaries and officials?

Mr. CHERTOFF. That is correct. We did not question dignitaries and officials like mayors or guests from foreign countries.

One of the reasons I wanted to give the status report is because obviously the staffs on both sides have a complete list of who we have questioned. If there is anybody in particular that someone feels we should depose that we have not deposed, or we should send a questionnaire to that we have not, obviously we have the time to do that. That is one of the reasons why I think it is important to give the status report now. But I am satisfied that we made a reasonable judgment without pursuing questioning to the point of illogic in making what I think is a very compelling determination about who needed to be questioned.

Mr. BEN-VENISTE. Mr. Chairman, could we see the other chart for a moment?

[Chart shown.]

Mr. BEN-VENISTE. The chart is entitled "Mrs. Clinton's Billing Records," but aren't those the Rose Law Firm billing records that we are talking about?

Mr. CHERTOFF. Well, they are, although they were found in the White House ultimately in the custody and control of the President and the First Lady.

Mr. BEN-VENISTE. So it was the Rose Law Firm billing records that was found at the White House; correct?

Mr. CHERTOFF. Correct.

Mr. BEN-VENISTE. And Mrs. Clinton's time and participation were included in those records, so the chart really ought to be "Rose Law Firm Billing Records." Is that correct?

Mr. CHERTOFF. I believe I am satisfied with the chart, but people can disagree.

Mr. BEN-VENISTE. You are satisfied with your chart, but they were the Rose Law Firm billing records.

Let me ask you whether, in fact, the bills themselves were not turned over to the RTC earlier? The bills comprise the document that you have displaced earlier. Those bills were sent to Madison Guaranty Savings & Loan and copies of those bills were already in the possession of the Committee prior to the time the billing records were discovered.

Mr. CHERTOFF. Actually, Richard, you know as well as I do, we had what were very fragmentary bills. In fact, the Committee will remember that we were frustrated, the Committee was frustrated when we had Mr. Hubbell up and Ms. Thomases up, and people from the firm, and they were frustrated because we did not have anything more than two or three bills.

Then we had a recap sheet, a recapitulation sheet that showed the way they were allocating dollar credit among the lawyers during this period of time. But the most important questions—How many hours were worked? And what was the actual work done?—was unknown to us and, to my knowledge, unknown to anybody else like the RTC, or anybody investigating it, until these records appeared and were presented.

Mr. BEN-VENISTE. In addition to having some of the actual bills, we had some of the timesheets for some of the lawyers.

Mr. CHERTOFF. I think we had what I would consider to be a negligible amount of this information. We had, I think, three or four bills, and a few timesheets of lawyers other than Mrs. Clinton. Frankly, the burning question which everyone will remember we raised was: Where is there a complete set of these records?

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you, Mr. Chairman, Mr. Chertoff.

Mr. Ben-Veniste has talked about the information we have had, in essence. If we had the haystack, these were the needles. As I understand it, your chart does attempt to identify the chain of custody.

The records were collected at the Rose Law Firm in mid-February 1992. Do I understand it correctly that Mr. Hubbell had them and discussed them with Susan Thomases and then gave them to

Vince Foster? So the last we know from direct testimony is that they were in the possession of the late-Mr. Foster. Is that correct?

Now when the subpoenas came, the subpoenas were in 1994. Was it the Independent Counsel and the RTC issued subpoenas, and anybody to whom the subpoena was directed or had knowledge of it has the responsibility, if they knew of the custody, to turn over these records? Is that fair?

Mr. CHERTOFF. That's right, Senator. In fact, we had Mr. Kendall who represented the President and the First Lady, and we had Ms. Sherburne from the White House who specifically indicated that they were aware of the subpoenas and had informed their clients of their obligation to turn over documents. And these clearly were included in the subpoenas.

Senator BOND. To me this is very important because our process of investigation was seriously delayed and hampered because these records went to some of the critical questions about which we were inquiring, and without the records we did not have the knowledge that those records now give us.

There is no one who admits seeing them between the time that they were transferred to Mr. Foster's file and the time that Ms. Huber has testified she found them in July 1994, and then realized—July 1995, excuse me—

Mr. CHERTOFF. I think actually early August.

Senator BOND. August 1995, and then realized in January what they were. So that is the time period.

What you have outlined for us is, by process of elimination we have to work through to find out who had them.

Now would information such as fingerprints which have been discussed in the media be of relevance in this inquiry?

Mr. CHERTOFF. It would be. I am not a fingerprint expert. I have obviously dealt with fingerprints in the past as a lawyer and as a U.S. Attorney. My understanding is you cannot date fingerprints, but I may be wrong. Certainly the technology may have changed in the period of time since I left the Government. What I think fingerprints show is that somebody handled something.

Senator BOND. At some point. But wouldn't subsequent fingerprints be on top? Could they tell if there were fingerprints on top of other fingerprints?

Mr. CHERTOFF. That goes beyond my knowledge.

Senator BOND. OK.

Mr. CHERTOFF. I can tell you the things that would show they were handled. Clearly if we could find out the sequence of prints, that would be helpful.

Senator BOND. As an attorney investigator, what other steps can this Committee take to help us resolve the questions of the custody, outside of identifying who might have had access, and determining whether, in fact, under sworn testimony they state they do have them and identifying the fingerprints, are there other steps that could be taken reasonably to determine that chain of custody?

Mr. CHERTOFF. I think all you can do are the following things, which I think we have done or are in the process of doing: You can ask people who might have seen them, who we have reason to believe might have seen them, or who had access to them and eliminate possibilities. You can examine fingerprints or physical evi-

dence. You can look at what is in the documents and ask yourself: Who would have wanted to keep the documents around?

Common sense is a large part of investigation, and obviously someone who is involved in national security policy at the White House and has never been at the Rose Law Firm, is extremely unlikely to want to be looking at these records or keeping them. You can use that approach. I think if you take all those together, that is the best shot you can take at answering the question. The fingerprints and physical evidence eliminating potential candidates, questioning the witnesses, and applying common sense.

The last thing I think you can do is this: We do have statements made by various witnesses, including Mrs. Clinton, about the subject matter. Some of those statements, as I said earlier, and this is why I began that presentation, some of those statements do relate to matters that are contained in the billing records.

Therefore, the question is really a two-part question. One is, if a person who made a statement had the billing records before they made the statement, and if there is an inconsistency, why did they make the statement if they had seen the records earlier?

Alternatively you could conclude that they did not see the records before they made the statement and they saw the records afterwards, and that is where the fingerprint evidence might come in.

I think one of the things that is going to be significant for the Committee at the end is to evaluate, if there is fingerprint evidence and I do not know that there is except what I read in the paper, if there is fingerprint evidence, to compare that with other statements and forms a judgment about the significance of those facts when they relate to each other.

Senator BOND. Would it bear on the credibility of that information if somebody who had access to those records were in a position, or was in need of information from those records at that time, would it be helpful for us to examine in the broader context what was going on immediately prior to the time when Ms. Huber found those records to determine whether someone potentially with access might have had reason to be reviewing those records?

Mr. CHERTOFF. I think that is actually a very helpful suggestion. I think that one of the ways you try to figure out who would have had the records is you ask who would have had a reason to be handling them? Since we know that they were in the White House in early August, clearly if there are people who had a reason to be looking at them at that time, you know, and we identify those people, that advances the analysis.

Senator BOND. We should so back and look through our records and the testimony and what was going on at that time to see what questions were being raised and what the discussion was to see who, for example, might have needed access to the records and inadvertently left the files on a table. That is one possibility to complete the circumstantial chain of evidence.

Mr. CHERTOFF. In fact, what we did do in connection with our investigation is we did consider the fact that in early August 1995, the RTC Inspector General's Office completed its analysis of the conflicts-of-interest question as regarded to the Rose Law Firm and determined that there were some conflicts of interest in terms of their having worked for Madison and having done work later for

the RTC. I believe that report was published or discussed in the newspaper in early August. So there clearly was at this period of time, in addition to this Committee's own hearings which were focusing on Mr. Foster's office, that were going on almost contemporaneously.

Senator BOND. I think that information would be very helpful if we could have a time line of what was happening in their period.

Mr. Chairman, that is very helpful. I think that outlines some productive lines of inquiry for the Committee.

I thank you.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. I would be curious if we have heard back from the Independent Counsel with respect to my request to have access to the FBI analysis?

Mr. CHERTOFF. We sent a letter out last week under the signatures of both the Majority and the Minority, and we have not gotten a formal response.

Senator MACK. I understand that there may be some raising objections as to why we should not have that. If the actual FBI report is subject to some sort of restriction, are there other avenues available to us to clear up these questions?

Mr. CHERTOFF. Senator, we have several things we could do. We could either get the report, or a witness who would summarize the report for us, or we could seek to get the underlying documents and comparison prints that were used, and then ask the FBI to perform a new analysis for us.

Senator MACK. I guess the point is that some people are saying this is restricted information because of Grand Jury rules?

Mr. CHERTOFF. I do not think it is Grand Jury or Independent Counsel. We are sensitive to the fact that they may be doing investigation based on the fingerprint analysis which involves calling people in, and this is my surmise now, but based on my experience I would assume that there would be a period of time where they would not want to publicly disclose whose prints are on and whose prints are off because they do not want witnesses to know whether they are home free or not.

You might call someone in, and you might benefit from the uncertainty in that person's mind about whether their fingerprints are there, and that might stimulate them to say something that, if they know that their fingerprints did not appear, they would not have said.

You should understand, Senator, that the existence of a print on a piece of paper clearly shows that someone handled the paper. The absence of a print does not show the contrary. I could handle this piece of paper all day and it may not show a fingerprint. But there is some value to the Independent Counsel for at least some period of time to keep this closed. What we have tried to impress on the Independent Counsel is our time limit and our desire and the very important need of the Committee to get this information.

Senator MACK. It seems to me that it is important to get the information. We do have witnesses that have told us they had nothing to do with these records. It would be helpful to them, I suspect,

if we would have the ability to analyze or have someone analyze the billing records for us and say, in essence, those people who said that they had not been involved with these records, had not touched these records, it would be helpful to them if that information were to be known. Second, it could be helpful to the Committee that there may be people who said to us they had no contact with the billing records. And if their fingerprints show up on those records, I think that is helpful.

Mr. CHERTOFF. That is correct.

Senator MACK. And I assume we are going to pursue this?

The CHAIRMAN. Well, I will ask that a copy of the letter be made a part of the record. This came from both the Majority and the Minority to the Special Counsel, for the information as it relates to what prints, if any, were found on these records.

I will ask both Counsel to pursue that matter, as it relates to when we will get an answer. It doesn't seem to me that it should take them an inordinate period of time. It may be that it will need the attention of both the Ranking Member and the Chairman to call personally, if need be, to get a determination as to when we are going to get that answer.

Mr. BEN-VENISTE. One of the problems is to try to square providing this report with their refusal to provide information earlier. As the Chairman will recall, Independent Counsel refused to provide information relating to the handwriting, or to the fingerprints analysis that was done on Vincent Foster's note. They refused to provide, despite our repeated requests, copies of Interview Reports of Officer Henry O'Neal, a request which, as the Chairman knows, we have once again reiterated to Independent Counsel.

Senator MACK. Mr. Chairman.

The CHAIRMAN. Yes, Senator Mack.

Senator MACK. I suppose it would be possible that the Independent Counsel could decide that the report done by the FBI is not available to us. Would we not have a claim on the billing records themselves, and that they turn over the billing records to us, so we could then ask the FBI to make an analysis for the Committee?

The CHAIRMAN. Absolutely. I believe that is what Mr. Chertoff made mention of. I am going to ask Counsel to further explain that sooner rather than later. We need access to that information to get the facts. We should do it before we run into the time limitations.

I would hope that we would be able to define that and get an answer. If they do not want to turn over the report to us, certainly we are entitled to an independent inspection of the documents, and have our own experts then review them so that this way we do not violate any confidentiality.

Indeed, I think that they are skating on thin ice by denying this information to us, but I am going to ask Counsels, both Mr. Chertoff and Mr. Ben-Veniste, to work on this matter to see if we cannot ascertain it.

Senator Sarbanes.

Senator SARBANES. Yes, I will yield to Counsel.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Now with respect to Senator Bond's observation regarding the billing records, I think he said: We have the haystack, the needles are what was recently produced. I would call

the Chairman's attention to the report dated February 25, 1996, of Pillsbury Madison & Sutro working for the RTC, which, in fact, did an exhaustive analysis of the newly found billing records and came to this conclusion:

The billing records found at the White House and other newly acquired evidence add considerably to the sum of knowledge with respect to this matter. Taken as a whole, however, the new evidence does not change the conclusions stated in the Rose report.

The new evidence weakens, to some extent, the conclusion that Seth Ward was a strawman or nominee, and that the acquisition therefore was wrongful, although those remain propositions that one could reasonably advocate.

The new evidence has very little effect on the analysis of what the Rose Law Firm knew and did before the acquisition of the IDC property close.

The new evidence shows that after the acquisition closed, lawyers for the Rose Law Firm, and in particular Mrs. Clinton, had more contact with Seth Ward in performing more services for Madison than previously was known, but there remains no substantial evidence that these lawyers knew or intended to aid and abet McDougal's apparent misconduct.

Now the hypothesis that you have spun through your observations before this Committee today, Mr. Chertoff, excludes the notion that these records were transported to the White House from Little Rock and then mislaid somewhere during that period of time until they were reportedly first discovered by Ms. Huber. Is that correct?

Mr. CHERTOFF. It doesn't because the whole question of mislaying them, the question then arises where were they mislaid and how were they found? I mean, we all know from our own life, you mislay things in your house, but if you find something in your house, even after you have mislaid it, someone still put it in your house and you are still the person who found it.

Mr. BEN-VENISTE. So the question is: Who transported them to Washington? That is an open question. But the hypothesis that you have explored today, then, would include the possibility, would it not, that following their transportation to the White House they were mislaid until Ms. Huber discovered them?

Mr. CHERTOFF. No. They were not mislaid at the point that Ms. Huber discovered them because, as her testimony ran, they were, in fact, open on the table in a place that a limited number of people go back and forth, and that they had not been there before. So we know this much, at least, as a matter of common sense—

Mr. BEN-VENISTE. Well, could I interrupt just for a second?

Mr. CHERTOFF. No. Actually, if you will let me finish, Mr. Ben-Veniste—

Mr. BEN-VENISTE. They were not open, were they, according to Ms. Huber's testimony?

Mr. CHERTOFF. I actually believe they were. And when I say "open"—

Mr. BEN-VENISTE. They were folded over so that they—

Mr. CHERTOFF. When I say "open," I mean, open to view, not within something, not contained within something.

Mr. BEN-VENISTE. They were folded over so that the front page was not readable.

Mr. CHERTOFF. Let me—to complete—according—

Mr. BEN-VENISTE. According to her testimony, isn't that so?

Mr. CHERTOFF. According to her testimony, having been in the room on previous occasions, they were not on the table. And then

on this occasion, they were in the open, not contained in anything, and she picked them up and removed them.

Mr. BEN-VENISTE. Could you show us how they were, according to Ms. Huber's testimony? How they were found on the table, and what shape, folded over or open?

Mr. CHERTOFF. Richard, let me finish. The point is——

Mr. BEN-VENISTE. Could you just answer that?

Mr. CHERTOFF. Since we are not typically in the habit of engaging in interrogation——

Mr. BEN-VENISTE. Well, you are sitting down there and that sort of gives me an opportunity to ask a question, and hopefully you would want me to correct you if you have misspoken.

Mr. CHERTOFF. I think, Richard, let me be 100 percent clear. The records were folded over——

Mr. BEN-VENISTE. Thank you.

Mr. CHERTOFF. And they were in the open on the table in a place where they had not been observed previously.

Mr. BEN-VENISTE. No, at the time——

Mr. CHERTOFF. Wait, wait.

Mr. BEN-VENISTE. You've answered my question.

Mr. CHERTOFF. Well, but I——

Mr. BEN-VENISTE. I have a limited amount of time, Mr. Chertoff. Let me ask you this. At the time that Ms. Huber reportedly discovered the records in the open, that was a time when there was construction going on in that area of the White House. Right?

Mr. CHERTOFF. There was construction going on in the residence. I don't believe it was actually in the Book Room. But I think that is why—let me say this for the benefit of the Committee—we explored the question of construction, but it still begs the question because no——

Mr. BEN-VENISTE. No, no. I am not asking you to argue with me. I am just asking to lay out these facts. Now, you do not recall, apparently, that there was construction in that area of the White House, but the log which we have received, the log of——

Mr. CHERTOFF. Yes.

Mr. BEN-VENISTE. —construction shows that on Wednesday, July 26, room 319A was indeed the area of construction. So let me help you with that.

Mr. CHERTOFF. Yes, there was construction out there. My point, Mr. Ben-Veniste——

Mr. BEN-VENISTE. That was my only question. I'm not asking to make an argument at this point, because I have very limited time.

Mr. CHERTOFF. Well, look, I would like to be able to give——

Mr. BEN-VENISTE. Mr. Chertoff——

The CHAIRMAN. No, no. Wait a minute. We are going to give Mr. Chertoff, like every other witness, an opportunity to answer the question.

[Laughter.]

Then if you are not satisfied with it, and if you want additional time, I will give you additional time.

Mr. BEN-VENISTE. OK.

The CHAIRMAN. Now, Mr. Chertoff, go ahead.

Mr. CHERTOFF. I think the point is——

Senator SARBANES. Mr. Chairman, we missed the opportunity at the outset, though, to get our photo opportunity with Mr. Chertoff because he didn't get sworn in. I am not suggesting that he should be, but I just want to make that observation. We had a wonderful chance here with this show to get a good photo opportunity right at the beginning, and we missed it.

The CHAIRMAN. That demonstrates that we were not interested in publicity, but rather trying the facts.

[Laughter.]

Now, I can assure you——

Senator BOXER. Just look at the part.

[Laughter.]

The CHAIRMAN. I can assure you that I know how to generate publicity.

[Laughter.]

Senator Simon.

OPENING COMMENT OF SENATOR PAUL SIMON

Senator SIMON. We agree with that.

Senator BOXER. Unanimous agreement.

The CHAIRMAN. Unanimous agreement. But if we want to get through with this session, let's move along.

Mr. CHERTOFF. I simply wanted to say, Richard, that one of the reasons that we went through the exercise of examining the construction workers was to eliminate this notion that a construction worker put this there. The fact of the matter is, it simply defies belief and common sense that a construction worker somehow took the records from outside the White House and brought them in.

We still are confronted——

Mr. BEN-VENISTE. I did not ask that question.

Mr. CHERTOFF. Please let me finish——

Mr. BEN-VENISTE. You have answered the question about whether there was construction.

Mr. CHERTOFF. We are still confronted with the question——

Mr. BEN-VENISTE. Mr. Chertoff, if I asked you what time it is you are going to tell me how to build a watch here. I'm only asking whether there was construction.

The CHAIRMAN. We note for the record there was construction.

Mr. BEN-VENISTE. The notion that when there is construction and when things are moved around, the possibility exists in my mind that new boxes could be opened. And if there were boxes there—and I'm not saying there were or there weren't—but that when there is construction and there is movement of materials, the possibility exists that new materials might be found.

Now let me——

Mr. CHERTOFF. I think, Richard, as you know——

Mr. BEN-VENISTE. I haven't asked the question.

Mr. CHERTOFF. Well, since I am here not as——

Mr. BEN-VENISTE. Mr. Chairman, may I ask my question?

The CHAIRMAN. Well, let me say this to you. You may make your observations or ask your questions. The logic of your observations and your questions will stand or fall on their own. Other people will decide about that.

Mr. BEN-VENISTE. I agree with that.

The CHAIRMAN. Let's move it now and let's stop the intramural scrimmaging.

Mr. BEN-VENISTE. Now the question exists here about how this chart was prepared and on what basis names were crossed out. You are aware, are you not, that Mrs. Clinton has made statements in various fora about these billing records? For example, on CBS before Mr. Smith and Ms. Zahn, January 19, 1996, the transcript shows that she was asked:

Ms. ZAHN. How on earth did those subpoenaed records end up there?

Mrs. CLINTON. I don't know, and I wish they'd come out in August.

Ms. ZAHN. Did you put those records there?

Mrs. CLINTON. Of course not.

She was asked by Maria Schriver of NBC on January 16, 1996:

Ms. SCHRIVER. Regarding these billing records that came about that had been subpoenaed 2 years ago, people say, gosh, how could a woman as smart and politically savvy as Hillary Clinton not know where these records were these past 2 years? Why didn't she make that a priority to find them, particularly when they were found at her own home in an assistant's desk?

Mrs. CLINTON. Well, I think I would love to know where they've been, too, because they prove what I've been saying all these years. I would have loved to have had them come out earlier.

I will not read all the public statements Mrs. Clinton has made. Obviously, she has testified in the Grand Jury on this subject. It was a very highly publicized event. Following her departure from the Grand Jury, she was quoted by the Associated Press on January 27, 1996, as having said: "I do not know how the billing records came to be found where they were found." Now, Mrs. Clinton—

Mr. CHERTOFF. Let me, if I may interject—

Mr. BEN-VENISTE. Hang on for a second.

The CHAIRMAN. Oh, come on. Let—

Senator SARBANES. Let him finish.

Senator DODD. Mr. Chairman, we had 30 minutes.

The CHAIRMAN. You are going to have all the time you want.

Mr. BEN-VENISTE. Let's try—

The CHAIRMAN. I'm not going to cut you off, Mr. Ben-Veniste. I'm going to say, let us try to be civil to each other. I know it is tough. Let's just calm down.

Mr. BEN-VENISTE. I hope I have been civil, Mr. Chairman.

The CHAIRMAN. Continue.

Mr. BEN-VENISTE. The White House requested that this Committee send an interrogatory to Mrs. Clinton. We did not send an interrogatory to Mrs. Clinton. We have all of these public statements, interrogatories sent to 60 people, but not to Mrs. Clinton, and yet her name is not crossed off that list even in the face of the public denials, the willingness to answer interrogatories, and the refusal of this Committee to send such an interrogatory.

I suggest that, under those circumstances, it is not fair not to cross Mrs. Clinton's name off in the same way you have crossed off the names of others who have denied knowing how those records came to be where they were.

I see my time has elapsed, Mr. Chairman.

The CHAIRMAN. Fine.

Senator Bennett, do you have any questions?

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I have some observations which Mr. Chertoff may wish to comment on.

As he said in his opening statement, I pursued the issue of the billing records rather persistently with Mr. Hubbell. And I remember, although I do not have the transcript in front of me, Mr. Hubbell saying he wished he could explain to me how the billing records of the Rose Law Firm if they were available would make it clear to me that Mrs. Clinton had nothing really to do with this account.

I remember saying, very clearly, Mr. Hubbell, I have never made out a billing record, but I have paid a lot of legal bills in my lifetime and think I understand how to read a legal bill. This legal bill makes it clear to me that Mrs. Clinton was the lead attorney on this issue.

Now, Mr. Hubbell said he was sorry he could not dissuade me from that view because he did not have the records available to him. The records are now available and they make it clear to this layman that Mrs. Clinton was the lead attorney on this issue.

I find it difficult to sit here and listen to people say that these records prove that her statement that she had nothing to do with this has been accurate all along; that they have proved what I have been saying all these years.

I do not agree. Having seen these records, I think they prove the opposite. If I had wanted to sustain the Clinton position on this issue, I would have wanted to keep these records hidden.

I am satisfied that someone with that same motive did that. I am not in a position to say who. I am not in a position to say where; or in a position to say when; but I think the work that Mr. Chertoff has laid out before us here is appropriate, and I think it is a logical, proper, act on the part of the Majority Counsel and I hope we will stop trying to confuse some of the issue in an effort to obfuscate what has been done here.

Somebody somewhere took a deliberate step, in my opinion, to prevent these from coming forward; and, through some kind of happenstance, the nature of which I do not know, they did come forward and they are indeed an unsolved question which this Committee needs to pursue.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I am prompted to observe that obviously when we write our final reports they are going to be very differing interpretations. I do not regard 63 hours of billing over a 15-month period as being a "substantial" amount of work.

Senator BENNETT. I do not, either, Senator Sarbanes. But I do regard 52 percent of the billing of a particular client to mean that the lawyer who is handling the affairs of that client was the lead lawyer on that case. The fact that that lawyer had other cases and spent time on other cases is to me irrelevant. But as you say, we can debate this during the final report.

Senator SARBANES. Is not 52 percent of the hours. I do not think it is 52 percent of the total billings, either. The partners being

billed at the highest rate, but 63 hours of work over a 15-month period I do not regard as a substantial amount of work. I think testimony that says, well, you know, I did a little bit of work on that thing is consistent with that record of performance.

Now someone can take a differing view and try to argue that 63 hours in 15 months is a "very substantial amount of billing," but I do not think most lawyers involved with billings would agree with that, frankly.

Senator BENNETT. I think most clients involved with paying the bill would agree with it.

Senator SARBANES. Well, I guess any amount of billing to a client is "significant." But from the lawyer's point of view, which is the testimony that is being assaulted, the suggestion that it was not a great amount of work, it does not seem to me that billing records showing 63 hours over a 15-month period contradicts that position.

Senator BENNETT. Well, as you say, we can deal with this in the report. Again, I think you are trying to change the universe when you go to her entire 15-month practice as opposed to the amount of time that was billed to this particular client.

The client looks at how much of his billing came as a result of one lawyer's fees. If the billing is \$100 and one lawyer bills \$95, it is easy to say, well, \$95 out of a \$100,000 practice is de minimis, but for the lawyer who is paying the \$100 bill and \$95 of it goes to the single lawyer for that client, \$95 is 95 percent of the bill. That is the view that I have taken.

I think these records make it very clear that on this issue, on this client, on these questions, she was clearly the lead lawyer.

Senator SARBANES. But the assault on Mrs. Clinton, in all fairness to her, is that when she said she did not do "a lot of work," she was not stating the situation. So you have to look at it from her point of view in terms of the total amount of work she did and how much of her total work was related to this particular bill. I come back to the point that I made that 63 hours over a 15-month period is not a significant amount of billing from the lawyer's perspective.

Now from the client's perspective, I don't know. I mean, it would depend on how much work had been done. It could be all of the work that was done for the client. It was not, in this case, incidentally, nowhere near that. But even if that were the case, that does not change it from the perspective of the lawyer who was doing the billing.

That is the statement, or the assertion, that has been challenged and I think that is not fair to Mrs. Clinton, frankly, to try to take her view that this was not a big client for her, or a big part of her billing, and then try to take 63 hours over 15 months and turn it into a big part of her practice. I do not think that will meet the best of fairness or any reasonable scrutiny of the matter.

Senator BENNETT. Well, again, I do not want to pursue it. My memory of her statement was that she had very little to do with the issue, that Mr. Massey was the primary mover in bringing the client and the primary person dealing with the client, and all she did was review his work.

I pursued this with Mr. Hubbell who said the same kind of thing about this particular account and then decried the fact that he did

not have the billing records in order to convince me that she was not the lead lawyer.

Now the billing records have come forth and they have convinced me that she was the lead lawyer. Therefore the statement that she made in what has come to be known as the "Pink Press Conference," was, in my view as a layman, misleading. In your view as a lawyer, it was an appropriate statement. Perhaps, we should leave it at that.

Senator SARBANES. Yes. I think the billing records back it up, because you find that others did much more work in terms of the number of hours and it seems to me we need to put all of this in perspective.

The CHAIRMAN. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Well, I just want to make the point, that we are speculating back and forth. We do not have to speculate. The Pillsbury law firm did an extensive \$4 million investigation over 2 years, far more than anyone of us have done individually here, and just read their conclusions on page 26 of their report. And I am quoting them now:

The suggestion that the Madison Guaranty business was economically significant to the Clintons, or for that matter the Rose Law Firm, finds no support.

I mean, we are going back and forth among ourselves. Here is an independent investigation done at great expense to the American taxpayer over a 2-year period, and they do not have a particular political axe to grind here. That is their conclusion.

It is not a question of whether or not one of us remembers certain testimony or not. There is a significant, independent investigation of the very essence of the question. In fact, I would hope, I mean, we go back and forth, just unsolved questions. Why don't we cross out Mrs. Clinton's name? She has also said that she did not place the records there, and yet, that does not happen here. I mean, that is quite obvious. We have got a chart up here and we cross out names.

Well, we have had the testimony of Mrs. Clinton in front of albeit news agencies that have asked the questions, but she has answered them, and she said no. And yet we still put up a poster board here of unsolved questions. I mean, that is not, what are we trying to do here in a sense, with all due respect, I say.

The central question is we do have the documents. They showed up. In fact the Independent Counsel received them while his investigation is ongoing. The Special Senate Committee received the records in time for our hearings. There was even an extension of the statute of limitations last winter in order to give the Pillsbury study an opportunity to go back and, in light of these things turning up, to review the matter, and then to comment further. They said: "No, we do not change our results." You know, we are glad to have the record, but they do not change our findings. I mean, that is not insignificant to me as a member of this panel.

So, you know, whose fingerprints are on them and so forth, I appreciate the titillating attraction to that particular question, but the fact of the matter is the records corroborate all the other evidence we had that says that this is not that big a deal at all. That

is the conclusion of the independent study that was done that was asked for and paid for in order to look at these issues. Here we have confirmation of evidence we had earlier. Independent Counsel gets them, our Committee gets them, plenty of chance to look at them. No, nothing tampered, nothing changed here at all.

In fact the First Lady has indicated, when she has been asked a very direct question, not by this Committee, not by Counsel, but a direct question: "Did you place them there?" She said, "No." But yet we do not cross out her name here.

And so we have this sort of a TV drama here about fingerprints on things, rather than the important questions to us, what is in these documents and what is there. Have they been tampered with, have they been monkeyed with?

Do we have an opportunity to then review our findings as a result of these being turned over? Why don't we talk about that? That is an important issue, it seems to me, for this Committee. We are not trying to pretend we are Sherlock Holmes up here, you know, looking for little fingerprints and so forth around there.

I do not have any particular axe to grind. I have drawn the conclusion that there is no significant economic advantage to the Clintons or the Rose Law Firm. That is also the conclusion of the Pillsbury study.

Senator BENNETT. Mr. Chairman, I did not ever anticipate that there was a significant economic benefit to the Rose Law Firm.

If I may read the statement Mrs. Clinton made which I, on my own basis, feel that the records contradict. She said, and I quote:

While I was the billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey who was then an associate at Rose and whose specialty was securities law. I was not involved in the day-to-day work on the project.

Some lawyers working in firms may say that is a correct statement. I did not feel that the bills that were submitted and paid reflected that; and having reviewed the records, I do not believe that the records reflect that.

I have an understanding of what being involved in day-to-day work on the project is. Apparently, some of the lawyers in the room have a different definition of what day-to-day work on the project is. As far as I am concerned, day-to-day work, as a client, is what I pay for. When I get billed for day-to-day work, I assume that the lawyer who billed me for day-to-day work did it. The bill was in Mrs. Clinton's name and the bill made it very clear that Mrs. Clinton was involved, from my perspective, in the day-to-day work on the project. And I think that is something that we have learned as a result of having these records, which contradicts Mr. Hubbell's testimony when I was questioning him.

Senator SARBANES. Well, I think it is clear, at least the billing practices that I understand in law firms, and from my own legal practice, is that the billing partner submits the bill but much of the work is done by associates or other partners, and that does not establish the fact that that work has been done by the partner who submits the bill. I mean, that is just a standard practice in a law firm. And that was clearly the practice, in fact, what does that show about that?

Mr. BEN-VENISTE. Here. This shows and I think this is a refinement of the point you were making, Senator, because what Mrs.

Clinton was talking about in the quote that you alluded to was the work that was done on the regulatory matters for Madison Guaranty Savings & Loan. And in that respect, the records show that she spent a grand total of 13.6 hours, not 60 hours, 13.6 hours, and that Mr. Massey spent 26 hours, double the amount that she spent on it, and that there were other individuals who brought the total up to 55 hours in total on that matter.

So in all fairness, when you look at the question that she was responding to, which was the work on the regulatory issues, the amount of time that she spent, 13 hours, would seem to be quite minimal, and certainly was only half of the time, according to these records, that Mr. Massey spent on the issue.

Senator BENNETT. Mr. Chairman, the light has just gone on and there is probably no point in pursuing this. I am sure no one is suggesting, when they talk about her as the billing partner, that she is billing at her rate for work somebody else did. I am sure they are recognizing that when they bill at her rate, they are billing for work that she did. And so it becomes a matter of what constitutes day to day, what constitutes major involvement, those kinds of judgments.

I appreciate the exchange. And I am convinced that Mrs. Clinton had more to do with this than she led us to believe.

Senator DODD. Mr. Chairman, could I make just an additional observation and I appreciate the opportunity. Just two things.

Again, this chart is up here. We have called this Mrs. Clinton's billing records. They are the Rose Law Firm's billing records, that is number one.

Number two, I should have pointed out that on January 27th, Mrs. Clinton appeared for 4 hours before the Whitewater Grand Jury. Now, we do not have that testimony, but when asked, she said that she did not know how the billing records came to be found where they were found.

Now the basis upon which we cross people's names off here is that they have denied that they were there. She has also denied that, and I think in fairness to her, we ought to cross her name off on this chart. She has denied it. And in leaving it out there I think indicates a bias that we should not be demonstrating at this point. She has said no, just as everyone else has.

Senator DOMENICI. What did she say? What were the words you quoted?

Senator DODD. This is what she said: "I do not know how the billing records came to be found where they were found." She has also, in response to two interviews on NBC and CBS, asked directly: "Did you place them there?" She said, "No."

Now, you know, we have accepted the statements from other people and taken their names off here. I mean, they are not even her billing records, they are the law firm's billing records. This Committee has got to try and maintain some veneer of objectivity here. When we throw a chart up calling them her records, despite the fact that she has denied putting them there, we keep her name up, and call it an unsolved question. You can appreciate why we get concerned about that.

The CHAIRMAN. Senator Domenici.

OPENING COMMENTS OF SENATOR PETE V. DOMENICI

Senator DOMENICI. Mr. Chairman, first I was going to inquire of you, as far as the hearing today, how much longer did you expect us to proceed?

The CHAIRMAN. It would be my hope we would have been done 20 minutes ago for the day.

Ms. RIVERS. Mr. Chairman, I am going to need about 5 minutes because I have yet to make any comment.

The CHAIRMAN. Fine.

Senator Domenici.

Senator DOMENICI. Yes, Mr. Chairman, I think we have had a lot of discussion here today about the First Lady's involvement in these various legal affairs of these questionable companies, but I do not think that is the issue. I think the issues are the issues stated on this chart. You might very well change the title of it. Fine, put it up there. But the truth of the matter is, somehow or another, the mystery of all this has been created by someone. I mean, who removed the records is a very interesting question, and we cannot even get an answer to that after all these months of hearings. Who handled the records? Who transported them?

Maybe all of those are unanswerable because Vince Foster did all of those. That is possible, and he is dead.

But the reason I would not strike the First Lady's name from who stored the records and who placed them is because it defies common sense that these records are open in a room she has access to all the time. She does not know how they got there, she does not know who brought them there, it is kind of like she does not know anything about that. They sort of showed up. I mean, that is not credible, that is just not credible.

My second point is the reason the records are important, one can now go through them and argue, between the two Senators, about what is a major involvement and a minor involvement, but the reason it is important these records were a long time in being found, is because they were the best evidence upon which to build recollection of the evidence described there.

If you are testifying 8 years later, and you could be shown those, you might have a more authentic and accurate recollection than what various people stated because, well, we do not have the records, we do not know what they say.

That is why it is important, if somebody was hiding the records during this period of time that is in someway related to Mrs. Clinton or the President, it is important to know.

The question still has to be answered, whether or not you are right on a minimal play by her minimal lawyering on one of these issues, we have the responsibility to get these answers.

Senator DODD. All right, but the point is, we want to know as a Committee. Putting it all aside, the issue was we do not have the records. We got them and we are satisfied these are the records, satisfied they have not been tampered with.

Is there anything in these records that contradicts anything else? That is what the Pillsbury committee wondered and that is why they extended the statute. So, you know, whose fingerprints and so forth, I can understand the intrigue about that. The issue for us

is, is there anything in these billing records that contradict any conclusions that have been drawn. And the answer is no.

Now, we can debate, between those who are lawyers and those who are not, as to what constitutes a billing partner and so forth. But my colleague, as a lawyer, understands that particular point.

Senator DOMENICI. Senator, everybody watching this knows I have not had an opportunity to be involved in these hearings. I came as one of the latest Senators added to it because of somebody leaving. I have not gone back and looked at the early information.

Senator DODD. I understand that.

Senator DOMENICI. Let me tell you. To me, it is very, very simple. Whether these records, belatedly found, contain information that is very damaging or minimally damaging or not damaging is not the point. The point is, if somebody purposely hid them while they were supposed to produce them, something is wrong.

Senator DODD. But you have got to have a motive, Peter. There is nothing in the records that contradicts what we have got. What is the point of hiding them?

Senator DOMENICI. Look, after the fact, it may be neat to say, man, I should have gone ahead and complied with the law. I should have turned them in because it turns out they are not incriminating. I never heard of that as a defense for violating a subpoena.

Well, 3 years later, you found them, you looked at them, they did not mean much. I just hid them from you.

That was just the way I was going to do things, whoever did that. I am not saying Mrs. Clinton did that. But I am saying you could not drop her name off of that one on storing the records there, when she is in there all the time and the records are there.

Senator DODD. But she said no.

Senator DOMENICI. Look, we did not strike people off only because they said no.

Senator DODD. Yes, we did. Yes, we did.

Senator DOMENICI. We struck them because there was no other evidence.

Senator DODD. Ask Counsel, he will tell you that.

Senator DOMENICI. But there was no other evidence. She is physically present in the room where they are. Ms. Carolyn Huber was around. She said no. Take her name off.

Mr. CHERTOFF. Mr. Chairman, if it helps, the people that we removed were based on their sworn testimony or their responses to sworn interrogatories. We did not remove people based on press accounts, nor would I, in any case necessarily accept that the press' way of putting a question, with all due respect to the press, necessarily nails it down.

Senator DODD. Why didn't you send her an interrogatory?

Mr. CHERTOFF. I think, Mr. Chairman, it is not my decision.

Senator DODD. There was an offer to do so. So why didn't you send it?

The CHAIRMAN. Let me say that I believe that Senator Domenici and Senator Bennett have accurately put forth that which compels people to say let us examine these records to see if we can ascertain who was handling them.

I understand it is impossible to get a timeframe from the technical aspects as to when, but certainly that is something that both

the Majority and the Minority have joined in together, not to be titillating, but it is to get as much in the way of facts that we can.

It is important to note that about the time that these records were found by Ms. Huber, and I do not think anyone has on this Committee, on either side, any reason to disbelieve her testimony, that there was a certain report being undertaken by the IG's office in the RTC.

I am wondering, Mr. Chertoff, if you would comment with respect to what was the significance of that report and what they were looking at, and why it might have a direct bearing on why someone would be looking at billing records of the Rose Law Firm, and being interested in it at or about the time Ms. Huber indicated she found these files.

Mr. CHERTOFF. Mr. Chairman, the report was directly focused on the work that the Rose Law Firm had done for McDougal Savings & Loan, Madison Guaranty Savings & Loan.

The question was whether the Rose Law Firm had been in a conflict of interest when it represented the RTC in a lawsuit against Madison's former accountants when, in fact, they had done work for Madison. And the conclusion of the Inspector General's report for the RTC was that there were conflicts.

One of the most obvious places you would want to look, if you were trying to assess or evaluate this Inspector General's report, would be to look at the actual record of the work that was done. What is significant about the billing records, as opposed to the bills, is that they are not merely dollar figures, but that they are actually hourly descriptions of the actual work that is being done by the individual lawyers involved.

One of the best pieces of evidence to look at, if you are trying to look at a report on the work that had been done by the Rose Law Firm, is to look at the underlying billing records. And that is why I think it would be significant in the context of anyone who was reviewing that report to go back to the original source material, the original underlying evidence and compare it.

Finally let me observe, Mr. Chairman, that this issue of the Rose Law Firm and the conflict of interest question raised by the RTC, had been discussed in the White House for a couple of years.

We know that in February 1994, shortly after the Independent Counsel was appointed and at the time the question of whether Roger Altman should recuse himself was being discussed with the White House, that after Mr. Altman decided to recuse himself, Mr. Ickes went up and met with the President and the First Lady and discussed specifically the question of whether there might be some liability or exposure based on this Rose Law Firm issue.

So the issue had been highlighted to them as early as February 1994, and when the report that addressed it came out in the summer 1995, this would have been, certainly if I were in a position of being at that law firm, I would want to look at these records. They would be very helpful.

The CHAIRMAN. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much, Mr. Chairman.

Mr. Chairman, I am going to express my opinion. I know you are not going to agree with it, and that is——

The CHAIRMAN. How do you know I will not agree with it?

Senator BOXER. Because I am going to repeat something that was said, but do it in my own way.

I find that the title of this chart is not only disturbing but it is unprofessional. I would direct Mr. Chertoff to a letter that he sent with Mr. Ben-Veniste just 6 days ago, to Mr. John Bates of the Office of the Independent Counsel in which you asked for copies of these records, and you refer to them as the Rose Law Firm billing records. I ask that that letter be placed in the record at this time.

The CHAIRMAN. So ordered.

Senator BOXER. I think it just proves the point that this kind of a chart that gets in the papers, that gets on this expensive little TV monitor over here, and gets handed out, is a political document.

These are not Mrs. Clinton's records, these are the Rose Law Firm billing records. The request for the records, signed by Mr. Chertoff himself, does not call them Mrs. Clinton's billing records.

So I find the chart before us to be most unprofessional and disturbing. I have to say, Mr. Chairman, that in my home State, people are looking at this Committee as nothing more than an attack on the First Lady, and I think it is hurting this Committee. And I do not think it does the U.S. Senate one bit of good.

Now, I want to ask you this question, Mr. Chertoff. Who turned over the documents, the Rose Law Firm billing records?

Mr. CHERTOFF. These records, Senator?

Senator BOXER. The records, yes.

Mr. CHERTOFF. Carolyn Huber turned them over.

Senator BOXER. She did. What was her title or is her title at the time that she turned them over?

Mr. CHERTOFF. I do not know her exact title.

Senator BOXER. Whom did she work for, Mr. Chertoff?

Mr. CHERTOFF. She works in the White House. There is no doubt, Senator, that Ms. Huber, in January, came to the realization that the records were relevant. She spoke to her own lawyer, she spoke to the White House lawyer.

Senator BOXER. I know that.

Mr. CHERTOFF. And she spoke to Mr. Kendall.

Senator BOXER. I understand that.

Mr. CHERTOFF. They turned the documents over.

Senator BOXER. As I understand it, Ms. Huber worked in the White House in a very confidential position, a very trusted employee. I think all of us felt, when we met her here, that she was, in fact, a very credible person.

And I think that underscores what Senator Dodd said. It is not as if someone who wanted to hurt the First Family found these records. In fact, the opposite is true. And in fact these records, in essence, show exactly what the First Lady had said. As I understand these records, in fiscal year 1985 through January 31, 1986, Madison work accounted for 3.7 percent of Mrs. Clinton's billings at the firm.

Now, Senator Bennett has decided that is wrong. I do not know on what basis. Maybe when he got bills from law firms when he was in business, he thought the senior partner was doing all the

work. Anyone who knows anything about billing knows that is not the truth. In fiscal year 1986 through 1987, Madison work accounted for 1.7 percent of Mrs. Clinton's billings at the firm. The very documents help to evidence this.

So my point is, when you put up a chart like that, it undermines this Committees credibility. And further, when you talk about these documents showing up and being turned over; in fact, they underscore what the First Lady has stated. This kind of a chart would be appropriate if you were trying to market and promote a new board game; "Unresolved Questions." It is, to me, extraordinary for a bipartisan committee.

My question to you, Mr. Chertoff, is this. What are you trying to say here today? Just put it in plain English. What is your point?

The CHAIRMAN. Now wait just a moment. You asked Mr. Chertoff a question and then you continue on. You have a perfect right, as a Senator, and a Member of the Committee, to express yourself, and you go ahead and do it. And I am going to say to Mr. Chertoff, wait until she is done. Do not try to answer while the Senator is speaking.

Go ahead, Senator.

Senator BOXER. OK. My question is, what point are you trying to make here, both in your testimony and in this chart?

Senator DODD. I just wanted to ask if my colleague would yield.

The CHAIRMAN. Please—

Senator BOXER. I will be glad to yield after I am—

The CHAIRMAN. Let them finish—

Senator DODD. Just the additional question, I would like to know who paid for this chart. Was this paid for by the Republican Policy Committee or paid for by this Committee, and furthermore, are there additional charts that have been paid for by the Republican Policy Committee or by this Committee?

Mr. CHERTOFF. I think the answer to the second question is that we did this one in-house, and I can ask Mr. Dinh exactly how it was prepared. I asked that it be prepared. I did not physically do it. We prepare all our charts in-house.

Senator DODD. What does that mean?

Mr. CHERTOFF. It means we use whatever technology we have available to the Committee to prepare charts.

Senator DODD. Paid for by the Committee?

Mr. CHERTOFF. It was done by the Service Department of the Senate. I gather they have a department here that does charts.

Senator DODD. Who created the actual document?

Mr. CHERTOFF. You mean who blew it up?

Senator DODD. Who created it, who wrote it up?

Mr. CHERTOFF. We wrote it up. My staff wrote it up. They prepared it based on a summary of evidence that had been collected.

In response to Senator Boxer's question, my point is this. Putting to one side the question of whether this really contradicts or confirms Mrs. Clinton's statements, and I have to say that the facts are that focusing on this client which was the question that was put to the First Lady by the RTC, namely, her involvement with this client, the records do show that on the Castle Grande matter, she spent 52 percent of the hours on it.

But putting that to one side—

Senator BOXER. That was not my question. I can read what that Castle Grande shows. But, since you raised it, I can tell you what we learned about it, but my question was——

The CHAIRMAN. Senator, would you please——

Senator BOXER. He is not answering my question.

The CHAIRMAN. Senator——

Senator BOXER. Mr. Chairman.

The CHAIRMAN. I am going to ask that——

Senator BOXER. Mr. Chairman, is this my time or your time?

The CHAIRMAN. Well, it is not yours to put a question to someone and not give him an opportunity to respond.

Senator BOXER. He did not respond.

The CHAIRMAN. Please let me conclude. If you find the answer unresponsive, then you can pursue that, but I am going to ask him to respond. If you are not satisfied with the response, you can certainly pursue it.

Mr. Chertoff.

Mr. CHERTOFF. I want to put that to one side because I think in fairness, Senator, all the Senators in the Committee have a right to draw their own judgment about the significance of the records.

The point of the chart is this. However people think the records cut, whether they think they are in favor of Mrs. Clinton or contrary to Mrs. Clinton's point of view, the Committee had a right to have this evidence when it was subpoenaed as did the RTC and as did the Independent Counsel. I mean, one of the fundamental propositions everybody in the country has to follow is when you get a subpoena or a court order, you obey it. It is not up to the recipient of the subpoena to say, well, they do not really need this one, or this is something that is helpful to me so I am going to hold it back, or harmful. They are obliged to comply with the law.

I think the damage that is done if, and I underscore if, if someone deliberately withheld documents that were under subpoena, I do not think you ever have to get to the question of whether it is pro or con in terms of who it helps. That is inappropriate. The Committee and the Senators were entitled, when they asked the questions about the work that was done, to have all the information that had been requested.

Then let people argue about whether this is good or bad, but they should certainly be in possession of the facts if there is a subpoena that requires the facts to be produced. I think apart from anything else, if someone deliberately withheld them, it was wrong.

Senator BOXER. Well, Mr. Chertoff, if I might say, you did not answer——

The CHAIRMAN. Who is going to ask the question?

Senator BOXER. I would like to finish. I want to make a point. You would make a good Senator because you are good at filibustering, but you never answered my question. What are you trying to say with this chart? Get to the point. What are you trying to say? Tell this Committee, what is the point of all this today?

There is not one thing that came out here today that we did not already know, so I would like to know what is the point of your chart and what are you trying to say? Were you the one who entitled it, "Mrs. Clinton's Billing Records"? If you did, why didn't you

refer to it 6 days ago as Mrs. Clinton's Billing Records, in this official letter?

The CHAIRMAN. All right, now, Mr. Chertoff, if you would like to answer.

Mr. CHERTOFF. First of all, the point is that the Committee has a right to get answers to these questions which go to the very heart of whether there has been cooperation with the Committee's efforts to determine the facts.

Senator BOXER. Have you asked Mrs. Clinton the questions then? You are trying to condemn a person to whom you never asked any questions. I do not understand that.

Mr. CHERTOFF. Second, I have not condemned anyone. And if I can respond to the question concerning the heading, for which I will take responsibility, please understand, Mrs. Clinton was the billing partner on this matter. It is not as if she was simply someone working there.

Senator BOXER. So why didn't you use that in your official letter?

Mr. CHERTOFF. Because frankly, Senator, whether it was entitled Mrs. Clinton's records or the Rose records in the letter was a matter of indifference.

Senator BOXER. What about on the chart?

Mr. CHERTOFF. We all know what we are talking about, and I think a Rose by any other name would smell as sweet, so it does not much matter what I used.

Senator BOXER. But you chose to write Mrs. Clinton's Billing Records, where the media could see it and you could get it on TV, but on the official letter, when you are being more professional and not political, you refer to it as the Rose Law Firm billing records.

I think it is unprofessional of you, I dare say. You are a very bright man. I think you knew exactly what you were doing, and since you are taking the credit or the blame for the title of that chart, then I think you have to, at least it seems to me, take the criticism from this side of the aisle that it is unprofessional and it smacks of, it seems to me, more of a political witch hunt when you do that—yet in an official letter, you call it by its official name.

That is all the questions I have. I did not find the answers, either. You never said what you are trying to prove. You keep repeating that we deserve answers. We deserve answers. That is not the question I asked. I guess you do not want to say what you are hinting about today. That is your choice.

The CHAIRMAN. I would note that we are well over the time.

Senator BOXER. Thank you, Mr. Chairman.

The CHAIRMAN. Let me make an observation. I think that the Minority has made their point. I think Mr. Chertoff was as responsive as the circumstances would permit. You cannot very well complete an answer when, in the middle of it, you are asked another question and then a third, and then a statement comes in, and then another Senator comes in and then another one.

Second, I would say that Mr. Chertoff has been most professional in all of his dealings with this Committee, and with the Members and staff of the Committee.

Third, I think that there are reasonable interpretations as it relates, because we understand what our concern has been and that has been in terms of the failure of a proper production of these doc-

uments, the billing records, which indicate Mrs. Clinton's billing pursuant to the request as it relates to work at the Rose Law Firm.

Reasonable interpretations can say a more accurate reflection would have been Rose Law Firm billing records, Mrs. Clinton's billing records as it relates to Rose Law Firm work.

But the fact is, I do not believe there was any attempt to be anything more than straightforward in attempting to indicate those areas that we have been able to resolve and those people who have not been questioned with respect to these matters will be questioned, and we still have a number of questions to pose.

And it may, at some appropriate period of time, there may be a question as to just how do we address questions, if we do, to the First Lady, and that will be something that I would take up with Senator Sarbanes and the other Members of the Committee before we make any determination as to how to do that, and what would be the most appropriate manner, if at all.

Senator BOXER. Mr. Chairman, I told you we would disagree when I started on the meaning of this.

The CHAIRMAN. I do not understand why the Senator is bent on being contentious. I am not disagreeing.

Senator BOXER. I am just making a point that we disagree. I mean, I think it is important to make that point because everything that I said, you said you disagree. You felt Mr. Chertoff is professional, and that he answered the question.

The CHAIRMAN. I think the record speaks for itself and I do not need an analysis of my comments by the Senator from California.

Senator BOXER. You analyzed mine, sir, so I was analyzing yours.

The CHAIRMAN. No, I have not. I have not in any way attempted to place any kind of interpretation on your observations. They stand for themselves. People will judge the merits of them, the sincerity of them, the accuracy of them, and the context of them as it relates to how you deliver them and what you say. I have not attempted to characterize any of your statements, nor will I.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much, Mr. Chairman, I have three brief questions.

Mr. Chertoff, perhaps this is a little bit repetitious, but you are aware that Mrs. Clinton stated that she did not recall reviewing the billing records during the 1992 campaign. Can you expand a little bit on that?

Mr. CHERTOFF. I have seen statements reported in the press through her lawyer indicating initially that she did not recall reviewing them, but then also indicating there was a possibility she had reviewed them. And I have to say, I have not looked recently at the accounts to know precisely what she said, what the lawyer said she said.

Senator MURKOWSKI. In your gathering of material, depositions or whatever, you cannot enlighten us any further on that?

Mr. CHERTOFF. I think the only people we determined during the campaign had seen the records were Mr. Hubbell and Mr. Foster, and then we knew Ms. Thomases had been told of the content of

the record by Mr. Hubbell. We did not get any evidence that this was discussed with Mrs. Clinton in 1992.

Senator MURKOWSKI. Investigators have been working on this and we have subpoenaed extensive documents, but there was a time lag, a substantial time lag, in bringing some of those documents before this Committee.

Can you highlight and perhaps identify the most egregious case where the Committee made the request and then received explanations from the White House relative to submitting that material, and then time delays. What was motivating the White House into not cooperating, since they knew they had the material and they seemingly decided to make it available to the Committee only after making us wait for it.

Senator SARBANES. Which material is the Senator referring to?

Senator MURKOWSKI. I am referring to specific material included were some of the documentations on the Rose Law Firm specifically that we had asked for, and they were delayed and delayed.

For example, Mr. Chairman, what is the oldest subpoena for the billing records, and how many subpoenas for the billing records were there? Do you recall? Didn't that take an awful long time?

Mr. CHERTOFF. We did not, this Committee did not actually decide to issue subpoenas until last fall in October. For a long period of time, the Committee operated based on requests, I guess you would say on the honor system, and then ultimately the Committee went to the——

Senator MURKOWSKI. OK, so we asked for them without the subpoenas, then we did not get the cooperation, and then we proceeded with the subpoenas?

Mr. CHERTOFF. That is correct.

We did learn from Mr. Kendall and Ms. Sherburne that there had been subpoenas from the Independent Counsel and the regulators back in 1994 that would pertain to these documents.

With respect to your earlier question, we have had the experience, we certainly had the experience in January and February, of a number of documents turning up relating to Whitewater that apparently emerged only when someone was moving offices. There were a number of instances of self-described inadvertent failures to turn over documents.

We have been in the position frequently of questioning people only to find out afterward that there were more pertinent documents, and then we have to decide whether to bring them back. We do bring them back sometimes but it is frankly a hardship for the witnesses and a hardship for the Committee to have to do that.

Senator MURKOWSKI. And was there any explanation offered by the White House because this did not occur on one occasion, it occurred on several occasions?

Mr. CHERTOFF. I know we had with Mr. Lindsey and with Mr. Waldman and with Mr. Ickes, and I remember particularly with respect to Mr. Lindsey, we received documents that were responsive actually the day after the Committee had lapsed at the end of February, and the explanation we received in the letter, if I recall it correctly, was again it was somehow inadvertent and there was a description of a reason why it had not been turned over.

But then we also learned from the lawyer that he actually had discovered the documents or had found the documents earlier that week, but had been busy on a trip, so that we did not actually get them until after the Committee's jurisdiction had lapsed.

I understand that since the end of February, other documents have trickled in.

Senator DODD. Would my colleague yield, just for a——

Senator MURKOWSKI. Let me finish because I am not going to be very long.

The bottom line one could conclude is there were numerous requests for subpoenas, for the billing records, and in your opinion, are you satisfied that they have been turned over?

Mr. CHERTOFF. Well, we have the billing records. Senator, I have to tell you——

Senator MURKOWSKI. All of the billing records?

Mr. CHERTOFF. Well, I cannot say all the records because there are probably original bills. We seem to have a complete set of billing printouts. What I can say to the Senator is not only was this requested and then ultimately subpoenaed, but this issue of the billing records was actually a focus of question and discussion by this Committee in the fall and early winter of last year, in November and December. It is not as if it was something that was mentioned in passing.

As Senator Bennett pointed out, the question of these records was discussed repeatedly and in particular with Mr. Hubbell who said, well, geez, you know, it would really be helpful if we could have the billing records so I could prove my point. And there were then determinations that we should try to get those records. So this was not anything that anyone could have overlooked.

Senator MURKOWSKI. My time is almost up. But you obviously have a life time of experience in your area of expertise. What line do you draw relative to withholding evidence in a case where you request, then you subpoena, then more turns up over an extended period of time, and it seems like if you ask the right questions, you might get a specific response, but you are not going to get everything.

How do you evaluate professionally in your business when clearly the line is crossed and withholding evidence is apparent, and what is the penalty for withholding evidence, if in fact it can be proven? Can you take us through that one side, we are not quite there, but how you get over it and what the penalty is?

Mr. CHERTOFF. The penalties vary. At the extreme, if there is a deliberate decision, intentional decision to withhold documents that are subject to subpoena by a Grand Jury, that is, as I say, if it is deliberate, that can be a Federal offense, punishable as an obstruction of justice, or it can be a contempt of Congress or a contempt of court, depending on who issues the subpoena.

In court cases all the time, these issues arise, and there are often sanctions, whether they be criminal or civil sanctions, visited upon parties that do not turn over documents that are requested.

As always, the issue is this: Were they covered by the subpoena, did the person who had them know about the subpoena, were they under the instruction of the subpoena, and did they, knowing that they were required to turn them over, deliberately withhold them.

And if they did so, then that is something that does get punished. Ultimately, it typically boils down to a question of knowledge and intent.

Senator MURKOWSKI. Mr. Chertoff, have we passed that line in this case?

Mr. CHERTOFF. I think, Senator, that the decision about how to proceed with sanctions, ultimately, of course, is probably one for the Special Counsel to make.

I think the Committee has a very strong institutional interest, however, in making its own determination about whether the Committee feels it is received proper cooperation with respect to these documents.

Senator MURKOWSKI. So what you are saying to us as Members is that it is our judgment?

Mr. CHERTOFF. It is your judgment.

Senator MURKOWSKI. I thank the Chair. That is the conclusion of my statements.

Senator SARBANES. Well, Mr. Chairman, I am not going to leave that matter at that point, because it is very important. When did this Committee first issue subpoenas, in October? Not until October, correct?

Mr. CHERTOFF. I think, yes, it was in the fall, correct.

Senator SARBANES. In October.

Mr. CHERTOFF. That is my recollection, yes.

Senator SARBANES. That is right. I think it is arguable whether the billing records were within the terms of the subpoena.

Pardon?

Mr. CHERTOFF. I say, respectfully, I think they were actually within the terms.

Senator SARBANES. It is an arguable matter.

Now, Mr. Chairman, we have been through this question of responsiveness to the Committee's requests and to the subpoenas, and I am frank to say I think there has been a tremendous amount of cooperation. We have gotten a tremendous amount of material.

We had an important issue that was taken to the Floor of the Senate where there was an argument that there was a privilege that could be asserted. That matter, in the end, was worked out in an acceptable way to all parties. But I do not think we ought to leave an impression here that some line has been crossed with respect to providing material. And it is very important to understand that no subpoena was issued from this Committee to the White House until October.

Subsequent to that, in my view, it was complied with in every respect. And these documents were discovered, actually they were turned over to us by Mr. Kendall after Ms. Huber found them. In fact, he sends them up with a cover letter to Mr. Giuffra. These documents were discovered yesterday by Ms. Carolyn Huber, Special Assistant to the President and Special Director of Correspondence. They were furnished promptly to our Committee. And then he indicated that the originals had been furnished to the Independent Counsel. So, you know, once discovered, they were turned over.

Now why they had not been found previously is an open question. I mean, I recognize that question, and there is been a lot of speculation about it, but the speculation we have heard from the

table this morning is all about sort of a deliberate effort, and it is quite plausible to have an explanation of it which is nondeliberate. In other words, it was a not deliberate effort. But I think this line of questioning could leave an erroneous impression in terms of the responsiveness.

I think Jane Sherburne, who has engaged in an interchange with the Committee, and we have documented it previously, tried in every good faith effort to meet the demands of the Committee and I think that needs to be put on the record.

Senator DODD. As I understood it, at the time the letter and the subpoena went out, and again making the points, I think it needs to be made because there are a lot of assumptions in some of the exchanges here, there was, it is arguable as to whether or not the billing records were included. Putting that aside, the time the letter and the subpoena went out, in fact, we now know where these documents were at the time the subpoena went out, don't we?

Mr. CHERTOFF. We know from Ms. Huber that they were in her possession between August 1995 and January.

Senator DODD. Right. So there is nothing to speculate about that. No one has contradicted that. So making that point I think is an important one because the assumption here, based on just what you hear this morning is, you do not know where those were at the time of the subpoena. We now know where they were. She says she found them later. We leave these things sort of dangling around here, and yet in August, at the time the letter went out, and in October, the time the subpoena went out, in fact, we know where the documents were. The person who had them in her possession discovered them, when she did, turns them over to her lawyer, Kendall, and the lawyer turns them over to us.

What I object to is sort of rank speculation here without any evidence to corroborate it. That is what is dangerous in a Committee like this. This is rank speculation.

The Senator from Maryland has pointed out, one could easily draw the conclusion as well, given the fact that we have had 50,000 documents turned over by this White House, not to mention 15,000 documents in the personal possession, 65,000 documents over the last 2 years. The fact that something does not turn up the minute we want it is not unheard of.

Mr. Chertoff, you have been involved in hundreds of cases and that has happened, I gather, and when it has happened, it has not been because of some corruption. Documents get lost. Is that not true?

Mr. CHERTOFF. Senator, documents get lost.

Senator DODD. With no corruption involved, couldn't we speculate about that?

Mr. CHERTOFF. I think always in my experience, it depends upon, in large part sometimes, the nature of the document. A document that is hotly discussed and sought, and a document—putting aside whether you think it's helpful or hurtful is clearly relevant to a discussion of issues that are being considered by the Independent Counsel or the Committee. I mean, anything is possible in life but that is the kind of document you would normally expect people to be producing.

Senator DODD. You are much more experienced at this than I am but it seems to me then when you find the document, and if you find the document, that something is in there that was really incriminating, then that leaves really a lot of credibility to the notion of why it might have been withheld.

When the document in fact corroborates everything that has been said, doesn't that conversely also then sort of eliminate or at least reduce significantly the motivations about why the document might not become available when it was sought?

Mr. CHERTOFF. I think, Senator, some of it depends. I have had the experience of having things discovered belatedly and then one puts the best face on them. I think in the end the Committee's going to have to judge whether it thinks the documents are hurtful or harmful.

I would say this. Usually you would expect if something was very helpful, they would produce it quickly. But I would also say that on occasion, things have been produced belatedly, and it's very common for lawyers then to argue well, it didn't very much matter anyway. And I think in the end, the critical point is the Committee has the right to have the information and I think you, as Members of the Committee, draw your conclusions.

Senator SARBANES. Senator Dodd, if you'd yield for a minute?

Mr. Chairman, I would like to put in the record at this point an article that appeared in The New York Times called "Docudrama" by Sidney Herman, a lawyer, which says:

Documents that are relevant to an investigation are found in an unexpected place 6 months after they were first sought. A shocking development?

Absolutely not. In most major pieces of litigation, files turn up late. One side or the other always thinks of making something of the late appearance, but these lawyers know the truth. It could just as easily happen to them.

Senator DODD. I thank my colleague.

Senator SARBANES. It goes on in that vein, and may I ask that that be put in the record.

The CHAIRMAN. So ordered. It will be placed in the record.

Senator MURKOWSKI. Mr. Chairman, I would just like the record to note that the Committee subpoena isn't the only subpoena that's been out there. The Department of Justice first began to issue subpoenas regarding the billing records on Christmas eve, 1993. That's a long time ago, Mr. Chairman.

Senator DODD. Mr. Chairman, I'd yield to Mr. Ben-Veniste.

The CHAIRMAN. I think the record adequately reflects, and I am going to ask all sides if we can't try to constrain ourselves. I know we think we have important points to make, but I will venture to say that these points have been made by both sides, not only at this hearing, but certainly in the past. So if we can try to confine ourselves.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Mr. Chertoff, you will acknowledge, will you not, that we did not specifically request the Rose Law Firm billing records from the White House, either in our letter request or in our subpoena. Isn't that so?

Mr. CHERTOFF. As I understand the subpoena and the letter requests we sent out, they quite clearly, to me, included the billing records.

Mr. BEN-VENISTE. Did we specifically request, did we say please give us any Rose Law Firm billing records that you have?

Mr. CHERTOFF. I think the answer, as I've said, Mr. Ben-Veniste, is they were categorical broad requests that included the billing records, although they did not specifically enumerate.

Mr. BEN-VENISTE. So they didn't specifically ask for the billing records. Isn't it correct that as far as our subpoena and letter request is concerned, I don't know what was in anyone else's subpoena or letter request, I do know what was in ours, what we asked for was any documents which relate to the operation, the solvency, and the regulation of Madison Guaranty Savings & Loan? That was the request that was made.

Mr. CHERTOFF. In part. In addition to that, there was a request for anything relating to the conflict of interest that arose with respect to the representation of the RTC in the case against the Council.

Mr. BEN-VENISTE. It was far from clear that our request, in response to Senator Murkowski's question, identified the Rose Law Firm billing records.

I think one other point worth making, because it was included again in Senator Murkowski's question to you, and you may have misspoken about that, and that had to do with statements attributed to Mrs. Clinton about whether or not she reviewed billing records during the 1992 Presidential Campaign. I believe the record is that either Mrs. Clinton, or her attorney at the time, stated that it was possible that she had reviewed the records.

Mr. CHERTOFF. I think that's correct. That's what I said.

Senator SARBANES. When did we send the subpoena? The end of October, wasn't it?

Mr. CHERTOFF. I don't remember the precise date. I know it was in October.

Senator SARBANES. I think it was the end of October.

The CHAIRMAN. Mr. Chertoff, we thank you.

The Committee stands in recess until tomorrow at 10:00 a.m.

[Whereupon, at 12:40 p.m., the Committee was recessed to reconvene the following day, Wednesday, May 8, 1966, at 10:00 a.m. in the same place.]

WILLKIE FARR & GALLAGHER

Benito Romano

New York
Washington, DC
London
Paris

May 3, 1996

BY FACSIMILE & U.S. MAIL

The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Appearance of Susan P. Thomases

Dear Senators D'Amato and Sarbanes:

We are in receipt of Senator D'Amato's May 1, 1996 letter, faxed to our offices at 6:30 p.m., requesting that Susan Thomases travel to Washington on less than a week's notice to provide a fifth session of testimony to the Special Committee.

We are prepared to produce Ms. Thomases to testify for a fifth time under oath. We request, however, that the Special Committee provide her with a reasonable period of notice prior to the date of that testimony. As you know, Ms. Thomases' multiple appearances have generated voluminous written testimony that she must, in fairness, have an opportunity to review prior to appearing again before the Special Committee. This becomes all the more necessary because, as we understand it from the staff, there is no limitation on the subject matters that the Special Committee will cover in Ms. Thomases' fifth appearance. In addition, the date proposed, May 7, 1996, conflicts with prior commitments of her counsel.

Accordingly, we would propose that the Committee agree to schedule Ms. Thomases for an appearance on May 14, 1996.

Separately, in response to Chairman D'Amato's suggestion that Ms. Thomases might wish to be deposed in advance of the public hearing, please understand that our client has

One Citicorp Center	212 821 8000
153 East 53rd Street	Fax: 212 821 8111
New York, NY 10022-4677	Direct: 212 821 82

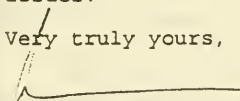
The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
May 3, 1996
Page 2

no such desire, unless that exercise might obviate the need for a further public appearance.

Finally, we are in receipt of Special Committee counsel's May 2, 1996 request to inspect the originals of documents ST132 -ST142, which were produced to the Committee earlier this year. We are willing to make these original documents available for inspection under reasonable conditions in keeping with past practice in our Washington offices on May 13, 1996. We also request that to expedite the proceedings the Special Committee make available for inspection any documents that it wishes to use in Ms. Thomases' appearance on May 13, 1996.

Thank you in advance for your cooperation with these issues.

Very truly yours,



Benito Romano

/cc: Susan P. Thomases, Esq.

115555

001 0000
002 0001
003 0002
004 0003
005 0004
006 0005
007 0006
008 0007
009 0008
010 0009
011 0010
012 0011
013 0012
014 0013
015 0014
016 0015
017 0016
018 0017
019 0018
020 0019
021 0020
022 0021
023 0022
024 0023
025 0024
026 0025
027 0026
028 0027
029 0028
030 0029
031 0030
032 0031
033 0032
034 0033
035 0034
036 0035
037 0036
038 0037
039 0038
040 0039
041 0040
042 0041
043 0042
044 0043
045 0044
046 0045
047 0046
048 0047
049 0048
050 0049
051 0050
052 0051
053 0052
054 0053
055 0054
056 0055
057 0056
058 0057
059 0058
060 0059
061 0060
062 0061
063 0062
064 0063
065 0064
066 0065
067 0066
068 0067
069 0068
070 0069
071 0070
072 0071
073 0072
074 0073
075 0074
076 0075
077 0076
078 0077
079 0078
080 0079
081 0080
082 0081
083 0082
084 0083
085 0084
086 0085
087 0086
088 0087
089 0088
090 0089
091 0090
092 0091
093 0092
094 0093
095 0094
096 0095
097 0096
098 0097
099 0098
100 0099
101 0100
102 0101
103 0102
104 0103
105 0104
106 0105
107 0106
108 0107
109 0108
110 0109
111 0110
112 0111
113 0112
114 0113
115 0114
116 0115
117 0116
118 0117
119 0118
120 0119
121 0120
122 0121
123 0122
124 0123
125 0124
126 0125
127 0126
128 0127
129 0128
130 0129
131 0130
132 0131
133 0132
134 0133
135 0134
136 0135
137 0136
138 0137
139 0138
140 0139
141 0140
142 0141
143 0142
144 0143
145 0144
146 0145
147 0146
148 0147
149 0148
150 0149
151 0150
152 0151
153 0152
154 0153
155 0154
156 0155
157 0156
158 0157
159 0158
160 0159
161 0160
162 0161
163 0162
164 0163
165 0164
166 0165
167 0166
168 0167
169 0168
170 0169
171 0170
172 0171
173 0172
174 0173
175 0174
176 0175
177 0176
178 0177
179 0178
180 0179
181 0180
182 0181
183 0182
184 0183
185 0184
186 0185
187 0186
188 0187
189 0188
190 0189
191 0190
192 0191
193 0192
194 0193
195 0194
196 0195
197 0196
198 0197
199 0198
200 0199
201 0200
202 0201
203 0202
204 0203
205 0204
206 0205
207 0206
208 0207
209 0208
210 0209
211 0210
212 0211
213 0212
214 0213
215 0214
216 0215
217 0216
218 0217
219 0218
220 0219
221 0220
222 0221
223 0222
224 0223
225 0224
226 0225
227 0226
228 0227
229 0228
230 0229
231 0230
232 0231
233 0232
234 0233
235 0234
236 0235
237 0236
238 0237
239 0238
240 0239
241 0240
242 0241
243 0242
244 0243
245 0244
246 0245
247 0246
248 0247
249 0248
250 0249
251 0250
252 0251
253 0252
254 0253
255 0254
256 0255
257 0256
258 0257
259 0258
260 0259
261 0260
262 0261
263 0262
264 0263
265 0264
266 0265
267 0266
268 0267
269 0268
270 0269
271 0270
272 0271
273 0272
274 0273
275 0274
276 0275
277 0276
278 0277
279 0278
280 0279
281 0280
282 0281
283 0282
284 0283
285 0284
286 0285
287 0286
288 0287
289 0288
290 0289
291 0290
292 0291
293 0292
294 0293
295 0294
296 0295
297 0296
298 0297
299 0298
300 0299
301 0300
302 0301
303 0302
304 0303
305 0304
306 0305
307 0306
308 0307
309 0308
310 0309
311 0310
312 0311
313 0312
314 0313
315 0314
316 0315
317 0316
318 0317
319 0318
320 0319
321 0320
322 0321
323 0322
324 0323
325 0324
326 0325
327 0326
328 0327
329 0328
330 0329
331 0330
332 0331
333 0332
334 0333
335 0334
336 0335
337 0336
338 0337
339 0338
340 0339
341 0340
342 0341
343 0342
344 0343
345 0344
346 0345
347 0346
348 0347
349 0348
350 0349
351 0350
352 0351
353 0352
354 0353
355 0354
356 0355
357 0356
358 0357
359 0358
360 0359
361 0360
362 0361
363 0362
364 0363
365 0364
366 0365
367 0366
368 0367
369 0368
370 0369
371 0370
372 0371
373 0372
374 0373
375 0374
376 0375
377 0376
378 0377
379 0378
380 0379
381 0380
382 0381
383 0382
384 0383
385 0384
386 0385
387 0386
388 0387
389 0388
390 0389
391 0390
392 0391
393 0392
394 0393
395 0394
396 0395
397 0396
398 0397
399 0398
400 0399
401 0400
402 0401
403 0402
404 0403
405 0404
406 0405
407 0406
408 0407
409 0408
410 0409
411 0410
412 0411
413 0412
414 0413
415 0414
416 0415
417 0416
418 0417
419 0418
420 0419
421 0420
422 0421
423 0422
424 0423
425 0424
426 0425
427 0426
428 0427
429 0428
430 0429
431 0430
432 0431
433 0432
434 0433
435 0434
436 0435
437 0436
438 0437
439 0438
440 0439
441 0440
442 0441
443 0442
444 0443
445 0444
446 0445
447 0446
448 0447
449 0448
450 0449
451 0450
452 0451
453 0452
454 0453
455 0454
456 0455
457 0456
458 0457
459 0458
460 0459
461 0460
462 0461
463 0462
464 0463
465 0464
466 0465
467 0466
468 0467
469 0468
470 0469
471 0470
472 0471
473 0472
474 0473
475 0474
476 0475
477 0476
478 0477
479 0478
480 0479
481 0480
482 0481
483 0482
484 0483
485 0484
486 0485
487 0486
488 0487
489 0488
490 0489
491 0490
492 0491
493 0492
494 0493
495 0494
496 0495
497 0496
498 0497
499 0498
500 0499
501 0500
502 0501
503 0502
504 0503
505 0504
506 0505
507 0506
508 0507
509 0508
510 0509
511 0510
512 0511
513 0512
514 0513
515 0514
516 0515
517 0516
518 0517
519 0518
520 0519
521 0520
522 0521
523 0522
524 0523
525 0524
526 0525
527 0526
528 0527
529 0528
530 0529
531 0530
532 0531
533 0532
534 0533
535 0534
536 0535
537 0536
538 0537
539 0538
540 0539
541 0540
542 0541
543 0542
544 0543
545 0544
546 0545
547 0546
548 0547
549 0548
550 0549
551 0550
552 0551
553 0552
554 0553
555 0554
556 0555
557 0556
558 0557
559 0558
560 0559
561 0560
562 0561
563 0562
564 0563
565 0564
566 0565
567 0566
568 0567
569 0568
570 0569
571 0570
572 0571
573 0572
574 0573
575 0574
576 0575
577 0576
578 0577
579 0578
580 0579
581 0580
582 0581
583 0582
584 0583
585 0584
586 0585
587 0586
588 0587
589 0588
590 0589
591 0590
592 0591
593 0592
594 0593
595 0594
596 0595
597 0596
598 0597
599 0598
600 0599
601 0600
602 0601
603 0602
604 0603
605 0604
606 0605
607 0606
608 0607
609 0608
610 0609
611 0610
612 0611
613 0612
614 0613
615 0614
616 0615
617 0616
618 0617
619 0618
620 0619
621 0620
622 0621
623 0622
624 0623
625 0624
626 0625
627 0626
628 0627
629 0628
630 0629
631 0630
632 0631
633 0632
634 0633
635 0634
636 0635
637 0636
638 0637
639 0638
640 0639
641 0640
642 0641
643 0642
644 0643
645 0644
646 0645
647 0646
648 0647
649 0648
650 0649
651 0650
652 0651
653 0652
654 0653
655 0654
656 0655
657 0656
658 0657
659 0658
660 0659
661 0660
662 0661
663 0662
664 0663
665 0664
666 0665
667 0666
668 0667
669 0668
670 0669
671 0670
672 0671
673 0672
674 0673
675 0674
676 0675
677 0676
678 0677
679 0678
680 0679
681 0680
682 0681
683 0682
684 0683
685 0684
686 0685
687 0686
688 0687
689 0688
690 0689
691 0690
692 0691
693 0692
694 0693
695 0694
696 0695
697 0696
698 0697
699 0698
700 0699
701 0700
702 0701
703 0702
704 0703
705 0704
706 0705
707 0706
708 0707
709 0708
710 0709
711 0710
712 0711
713 0712
714 0713
715 0714
716 0715
717 0716
718 0717
719 0718
720 0719
721 0720
722 0721
723 0722
724 0723
725 0724
726 0725
727 0726
728 0727
729 0728
730 0729
731 0730
732 0731
733 0732
734 0733
735 0734
736 0735
737 0736
738 0737
739 0738
740 0739
741 0740
742 0741
743 0742
744 0743
745 0744
746 0745
747 0746
748 0747
749 0748
750 0749
751 0750
752 0751
753 0752
754 0753
755 0754
756 0755
757 0756
758 0757
759 0758
760 0759
761 0760
762 0761
763 0762
764 0763
765 0764
766 0765
767 0766
768 0767
769 0768
770 0769
771 0770
772 0771
773 0772
774 0773
775 0774
776 0775
777 0776
778 0777
779 0778
780 0779
781 0780
782 0781
783 0782
784 0783
785 0784
786 0785
787 0786
788 0787
789 0788
790 0789
791 0790
792 0791
793 0792
794 0793
795 0794
796 0795
797 0796
798 0797
799 0798
800 0799
801 0800
802 0801
803 0802
804 0803
805 0804
806 0805
807 0806
808 0807
809 0808
810 0809
811 0810
812 0811
813 0812
814 0813
815 0814
816 0815
817 0816
818 0817
819 0818
820 0819
821 0820
822 0821
823 0822
824 0823
825 0824
826 0825
827 0826
828 0827
829 0828
830 0829
831 0830
832 0831
833 0832
834 0833
835 0834
836 0835
837 0836
838 0837
839 0838
840 0839
841 0840
842 0841
843 0842
844 0843
845 0844
846 0845
847 0846
848 0847
849 0848
850 0849
851 0850
852 0851
853 0852
854 0853
855 0854
856 0855
857 0856
858 0857
859 0858
860 0859
861 0860
862 0861
863 0862
864 0863
865 0864
866 0865
867 0866
868 0867
869 0868
870 0869
871 0870
872 0871
873 0872
874 0873
875 0874
876 0875
877 0876
878 0877
879 0878
880 0879
881 0880
882 0881
883 0882
884 0883
885 0884
886 0885
887 0886
888 0887
889 0888
890 0889
891 0890
892 0891
893 0892
894 0893
895 0894
896 0895
897 0896
898 0897
899 0898
900 0899
901 0900
902 0901
903 0902
904 0903
905 0904
906 0905
907 0906
908 0907
909 0908
910 0909
911 0910
912 0911
913 0912
914 0913
915 0914
916 0915
917 0916
918 0917
919 0918
920 0919
921 0920
922 0921
923 0922
924 0923
925 0924
926 0925
927 0926
928 0927
929 0928
930 0929
931 0930
932 0931
933 0932
934 0933
935 0934
936 0935
937 0936
938 0937
939 0938
940 0939
941 0940
942 0941
943 0942
944 0943
945 0944
946 0945
947 0946
948 0947
949 0948
950 0949
951 0950
952 0951
953 0952
954 0953
955 0954
956 0955
957 0956
958 0957
959 0958
960 0959
961 0960
962 0961
963 0962
964 0963
965 0964
966 0965
967 0966
968 0967
969 0968
970 0969
971 0970
972 0971
973 0972
974 0973
975 0974
976 0975
977 0976
978 0977
979 0978
980 0979
981 0980
982 0981
983 0982
984 0983
985 0984
986 0985
987 0986
988 0987
989 0988
990 0989
991 0990
992 0991
993 0992
994 0993
995 0994
996 0995
997 0996
998 0997
999 0998
1000 0999
1001 1000
1002 1001
1003 1002
1004 1003
1005 1004
1006 1005
1007 1006
1008 1007
1009 1008
1010 1009
1011 1010
1012 1011
1013 1012
1014 1013
1015 1014
1016 1015
1017 1016
1018 1017
1019 1018
1020 1019
1021 1020
1022 1021
1023 1022
1024 1023
1025 1024
1026 1025
1027 1026
1028 1027
1029 1028
1030 1029
1031 1030
1032 1031
1033 1032
1034 1033
1035 1034
1036 1035
1037 1036
1038 1037
1039 1038
1040 1039
1041 1040
1042 1041
1043 1042
1044 1043
1045 1044
1046 1045
1047 1046
1048 1047
1049 1048
1050 1049
1051 1050
1052 1051
1053 1052
1054 1053
1055 1054
1056 1055
1057 1056
1058 1057
1059 1058
1060 1059
1061 1060
1062 1061
1063 1062
1064 1063
1065 1064
1066 1065
1067 1066
1068 1067
1069 1068
1070 1069
1071 1070
1072 1071
1073 1072
1074 1073
1075 1074
1076 1075
1077 1076
1078 1077
1079 1078
1080 1079
1081 1080
1082 1081
1083 1082
1084 1083
1085 1084
1086 1085
1087 1086
1088 1087
1089 1088
1090 1089
1091 1090
1092 1091
1093 1092
1094 1093
1095 1094
1096 1095
1097 1096
1098 1097
1099 1098
1100 1099
1101 1100
1102 1101
1103 1102
1104 1103
1105 1104
1106 1105
1107 1106
1108 1107
1109 1108
1110 1109
1111 1110
1112 1111
1113 1112
1114 1113
1115 1114
1116 1115
1117 1116
1118 1117
1119 1118
1120 1119
1121 1120
1122 1121
1123 1122
1124 1123
1125 1124
1126 1125
1127 1126
1128 1127
1129 1128
1130 1129
1131 1130
1132 1131
1133 1132
1134 1133
1135 1134
1136 1135
1137 1136
1138 1137
1139 1138
1140 1139
1141 1140
1142 1141
1143 1142
1144 1143
1145 1144
1146 1145
1147 1146
1148 1147
1149 1148
1150 1149
1151 1150
1152 1151
1153 1152
1154 1153
1155 1154
1156 1155
1157 1156
1158 1157
1159 1158
1160 1159
1161 1160
1162 1161
1163 1162
1164 1163
1165 1164
1166 1165
1167

CONFIDENTIAL

In Arkansas, the same official happened to serve both as Savings and Loan Association Supervisor and Securities Commissioner. In 1985, Ms. Beverly Bassett held this dual post. A review of this entire transaction from the vantage point of 1995 makes it clear that Commissioner Bassett was cautious, fair, and firm and that she took aggressive regulatory action, which was rare on the part of federal and state S&L officials after the federal deregulation of S&L's in the early 1980's. While she recognized that Madison Guaranty, like other state corporations, could issue preferred stock, she was careful to protect the public against the sale of securities by an institution that was not adequately capitalized. Madison Guaranty was unable to meet the stringent requirements she imposed, and the Rose Law Firm was ultimately unsuccessful in its efforts on behalf of Madison Guaranty.

I was not involved in any meetings with state regulators on these matters. I may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding an S&L matter. I do not remember to whom I spoke. Insofar as I am aware, my name appears only three times in the many documents exchanged by Rose and the state regulators. The first time is in a letter Mr. Massey wrote to state regulators expressing his view that it was permissible for Madison Guaranty to authorize and issue a class of non-voting preferred stock (DKRT11000701-11000702, attached hereto at Tab 17A). He drafted and sent a letter to Mr. Charles Handley, of

DKSN000807

10. Describe your involvement in Madison Guaranty v Frost.

To the best of my knowledge, I was not involved in this case.

11. Identify all persons with specific knowledge of your involvement in this matter.

Please see my Answer to Question 10, supra.

12. Identify all documents relating to your involvement in this matter.

Please see my Answer to Question 10, supra.

13. Describe your involvement with Rose's representation of Madison before the Arkansas Securities Department (ASD), including but not limited to details of work you performed in 1985 for Madison regarding obtaining approval from the ASD to issue preferred stock.

In the spring of 1985, Madison Guaranty Savings & Loan Association engaged the Rose Law Firm to represent it in an attempt to secure permission for the S&L to issue preferred stock and market it through a wholly-owned brokerage firm. While I was the billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose and whose specialty was securities law. I was not involved in the day-to-day work on the project. My knowledge of the events concerning this representation, as set forth in this Answer, has been largely derived from a review of the relevant documents rather than my contemporaneous involvement in the representation since Mr. Massey primarily handled the matter.

ALFONSO M. D'AMATO, NEW YORK, CHAIRMAN
 PHIL GRAMMS, TEXAS
 RICHARD C. SHIELDS, ALABAMA
 CHRISTOPHER S. BOND, MISSOURI
 CONNIE MACLE, FLORIDA
 LAUCH FAIRCLOTH, NORTH CAROLINA
 ROBERT F. BENNETT, UTAH
 ROD GRAMM, MINNESOTA
 BILL FRIST, TENNESSEE

PAUL S. SARISBERG, MARYLAND
 CHRISTOPHER J. ODDO, CONNECTICUT
 JOHN P. KERRY, MASSACHUSETTS
 RICHARD H. BRYAN, NEVADA
 BARBARA BOSEN, CALIFORNIA
 CAROL MOSELEY BRAUN, ILLINOIS
 PATTY MURRAY, WASHINGTON

HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GUERRA, JR., CHIEF COUNSEL
 PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN S. HARRIS, DEMOCRATIC STAFF DIRECTOR
 AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

May 1, 1996

Via Facsimile and U.S. Mail

John Bates, Esq.
 Office of the Independent Counsel
 1001 Pennsylvania Avenue, N.W.
 Suite No. 490N
 Washington, D.C. 20004

Dear Mr. Bates:

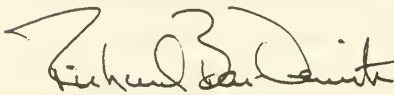
The Special Committee to Investigate Whitewater Development Corporation and Related Matters is investigating the circumstances surrounding the discovery in the White House Residence of records reflecting the Rose Law Firm's representation of Madison Guaranty Savings and Loan Association (the "Rose Law Firm Billing Records").

We understand that the Office of Independent Counsel has conducted a fingerprint analysis of the original billing records. On behalf of the Special Committee, we hereby request that you provide the Special Committee with a copy of the report of that analysis.

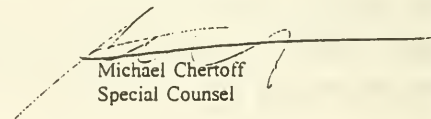
In the event that you conclude that disclosure of the report is inappropriate at this time, please advise promptly if you anticipate a change in circumstances such that you would be able to produce the report requested.

Please call us at 224-7391 with any questions. Thank you.

Very truly yours,



Richard Ben-Veniste
 Minority Special Counsel



Michael Chertoff
 Special Counsel

**"MRS. CLINTON'S BILLING RECORDS" CHART
WAS NOT PROVIDED IN TIME FOR PUBLICATION**

Docudrama

By Sidney N. Herman

CHICAGO

Documents that are relevant to an investigation are found in an unexpected place six months after they were first sought. A shocking development?

Absolutely not. In most major pieces of litigation, files turn up late. One side or the other always thinks of making something of the late appearance, but these lawyers know the truth: it could just as easily happen to them.

Despite diligent searches, important papers in large organizations are always turning up after the initial and follow-up searches. How many times have you looked for something on your desk and couldn't find it, only to have it appear right under your nose later? Happens all the time.

Indeed, as every litigator knows, there is nothing worse than having an important document show up late. You've only highlighted its absence for your opponent. If you know where it is, it is far better to include it in the

initial delivery of relevant papers, where it gets mixed in with the rest of the morass. Why red-flag it by holding it back?

My former partner, Kenneth Starr, knows all this. As independent counsel in the Whitewater investigation, he will take it into account.

But the American people have no reason to know that this is a normal

Please. Every
lawyer loses files.

occurrence; it is not part of their everyday experience. Reporters really don't have any reason to know this either. Or they may know, and simply choose to ignore it.

Last summer, notes that were critical to the celebrated libel suit brought by Jeffrey Masson against the writer Janet Malcolm appeared in her private study, years after they were first sought. I recall that discovery being treated as an interesting happenstance, nothing more.

When documents show up belatedly, even in private quarters, there is simply nothing unusual about it. ☐

Sidney N. Herman is a lawyer.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, MAY 8, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

When last we met, there was concern with respect to scheduling, and I am very pleased to announce that we have been able to agree to the issuance of subpoenas to Mr. David Watkins and to Mr. Webb Hubbell, requiring the production to the Committee of certain Bank of Kingston records which Mr. Hubbell had in his possession. These Bank of Kingston records were in the files of the Rose Law Firm and related to work billed by the firm to their bank which was then owned by Jim McDougal.

Again I want to commend both Counsels and staff for being able to reach an accord so that we can move forward as quickly as possible. Staff has been instructed to take depositions and to look at the quality and ascertain whether witnesses will be required to make a public testimony. Where we can avoid that we will in order to complete our work as expeditiously as possible.

We have combined the panels in order to have a more orderly presentation and also to save time. I am going to ask the witnesses to please stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. Let me thank all of our witnesses for coming today and ask if any of you have a statement that you would like to submit for the record in writing, or one that you would like to make before we begin?

SWORN TESTIMONY OF FRANK B. BURGE FORMER SENIOR VICE PRESIDENT CITIZENS BANK & TRUST OF FLIPPIN, ARKANSAS

Mr. BURGE. No.

**SWORN TESTIMONY OF JAMES N. PATTERSON
FORMER PRESIDENT
RIVER VALLEY BANK & TRUST OF LAVACA, ARKANSAS**
Mr. PATTERSON. No.

**SWORN TESTIMONY OF ROBERT RITTER
FORMER PRESIDENT, CEO & DIRECTOR
CITIZENS BANK & TRUST OF FLIPPIN, ARKANSAS**
Mr. RITTER. No.

**SWORN TESTIMONY OF H. DON DENTON
FORMER SENIOR VICE PRESIDENT & CHIEF LENDING
OFFICER, UNION NATIONAL BANK OF LITTLE ROCK
FORMER SENIOR VICE PRESIDENT & CHIEF LENDING
OFFICER, MADISON GUARANTY SAVINGS & LOAN**
Mr. DENTON. No.

**SWORN TESTIMONY OF VERNON H. DEWEY
FORMER LOAN OFFICER, CITIZENS BANK & TRUST OF
FLIPPIN/1ST OZARK NATIONAL BANK**
Mr. DEWEY. No, sir.

**SWORN TESTIMONY OF RON A. PROCTOR
FORMER VICE PRESIDENT, CITIZENS BANK & TRUST OF
FLIPPIN/1st OZARK NATIONAL BANK**

Mr. PROCTOR. No.
The CHAIRMAN. Senator Sarbanes.
[No response.]
The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND
Senator BOND. Thank you, Mr. Chairman.

Let me deal with this rather briefly. Yesterday after I left, some of my colleagues on the other side of the aisle decided to raise questions about a chart which my staff was largely responsible for conceiving and putting together.

I wanted to set the record straight. These are the questions that I think must be addressed by this Committee.

We know that the billing records of Mrs. Clinton's time on Madison are very important to this investigation. The fact that they did not show up after having been under subpoena for better than 2 years until they were discovered by Ms. Huber early this year, has significantly delayed out investigation and it has prevented us from getting to many of the facts that might explain the extraordinary efforts taken by the White House to get information on, interfere with, and impede Federal investigations.

We listed the major questions on this chart. Here you see where we have sworn testimony about, for example, who removed the records from the Rose Law Firm in 1992. We have drawn a line through Mr. Hubbell's name because, in sworn testimony before this Committee, he stated that he was not the one who removed the law firms records.

We have a checkmark because it has been confirmed, in sworn testimony, that Mr. Hubbell and Mr. Foster did, in fact, handle the records in Little Rock during the 1992 Presidential Campaign.

Yesterday, Mr. Chertoff outlined the process of elimination—how we came to these people about whom we are continuing to make inquiries to find out why the records were not turned over. That to me, Mr. Chairman, is essential, not only in resolving the major questions this Committee was expected to resolve, but also in resolving the question of whether there was a conscious effort by someone in possession of the records and in violation of the subpoena, to withhold those records from the Independent Counsel, from other investigatory agencies, and this Committee.

The attack on this chart yesterday, after I left the room, was on the fact that we titled the chart "Mrs. Clinton's Billing Records." Now, I would have hoped that we could devote our time to resolving the questions listed on the chart. I felt this was an important way of identifying some of the critical questions remaining in this investigation.

Since the question has been raised why the term "Mrs. Clinton's Billing Records" rather than "Rose Law Firm's Records" were used, let me be very clear. These billing records were compiled at the Rose Law Firm on the time of Mrs. Clinton. We have testimony that Mrs. Clinton was the lead billing partner, and, as pointed out by Mr. Chertoff yesterday, spent more time than any other of the lawyers at Rose Law Firm on the Madison Guaranty question.

The fact that they had left the Rose Law Firm was evident. They were taken control of by people associated with the Clinton Campaign and/or the close associates of the Clintons, or the Clintons' themselves.

We are not interested in the Rose Law Firm files in general. What we sought was the information on Mrs. Clinton's billing. Mrs. Clinton's records were in there. She was the billing partner. They were removed from the law firm because they reflected Mrs. Clinton's activities. The Newsweek story that circulated last week reportedly indicated that Mrs. Clinton's fingerprints had supposedly been found on the records. The line was used: Well, of course her fingerprints were found on the records. They are her records. That was the statement that was used. Who is the "her" they are talking about? They are talking about Mrs. Clinton.

Frankly, Mr. Chairman, we have a lot more important matters to deal with than the title of this chart. I stand by that title. They are Mrs. Clinton's billing records. Later on, I would be happy to discuss this, at length, with anybody who wants to argue with me.

Mr. Chairman, I would submit for the record excerpts from the CNN "Burden of Proof" show of April 29th, 12:30 p.m. Eastern Time, which shows that the Minority Counsel has used the term "they were her records."

We have important questions to resolve. I hope we can get on with these questions. If anybody wants to argue about the chart with me, I would be happy to do so, probably outside this room, so as not to take up further time of the Committee. But I did want to set this record straight. That is why we are interested; not because they were Rose Law Firm records, but because they were Mrs. Clinton's records.

I hope now we can get on with resolving the questions.
Thank you, Mr. Chairman.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes.

Senator SARBANES. While I appreciate Senator Bond's suggestion that we take this up later, I would like to take it up right now since he has brought it up.

The CHAIRMAN. I have asked to stop the clock at this point so that we can keep some semblance. We will complete our half hour and we will start it if you want to respond. But we will put the clock on and it will be charged to the Democratic time.

Go ahead, Senator.

Senator SARBANES. You mean this exchange will not be on our time? Then when we go to the panel we will go back to the time?

The CHAIRMAN. Well, either way. It will not be out of the time. This way you can have an opportunity—

Senator SARBANES. Well, Mr. Chairman, I just want to make the point that the title of this thing is rather important. These are the Rose Law Firm billing records with respect to work done for Madison Guaranty Savings & Loan. The number of hours worked by other lawyers that are reflected in these billings far exceed, by more than a factor of 2 and 3 to 1, the work done by Mrs. Clinton. I mean, I know why you put the title on there, but it is not accurate and I think the point ought to be made very strongly that it is not accurate.

Also, Mr. Chairman—I am going to yield here in a moment—we had the discussion yesterday about discovery of records. I put an insert in the record, Docudrama, about the lawyer who said it is not unusual, in litigation, to discover documents later. I want to put in today's record an article that appeared in The Washington Post on April 27, 1994. "The Judge Closes the Case of Marriott's Missing Box. Firm to pay some legal bills for bondholders group is faulted for delaying information." And let me just read briefly from this story:

The Marriott Corporation, a Federal judge has ruled, must pay some of the legal bills for a group of bondholders that is suing the company. The reason, according to the judge, Marriott shouldn't have waited 4 months to tell the bondholders that a box filled with documents crucial to the bondholders lawsuit had fallen off a Marriott Courier truck and was missing. The saga of the missing box dates back to a rainy night in January 1993, when attorneys at Marriott's headquarters in Bethesda loaded 34 boxes of documents onto a Toyota pickup truck. Somewhere, something went wrong. One box, according to Marriott, never made it to Washington. To this day, neither the box nor its contents has ever been fully accounted for.

I am not going to quote any further, but this clearly makes the point that this problem of missing documents occurs all the time in legal matters. The kind of innuendo that developed at the table yesterday by Mr. Chertoff, seems to me, unwarranted and uncalled for. I think this story just makes that point in a stronger way. I could go on at length about this, but in deference to the sensibilities of some of the people here, I do not choose to do it right now.

I yield to Senator Simon.

Senator BOND. Mr. Chairman, that is all very interesting. I think we ought to get on with the question of how the records got there. They obviously did not fall off of a Marriott truck.

[Laughter.]

I am sure that those things can happen, but the real question is: How did those records stay away from our view for critical periods of the investigation and then show up in the White House Book Room in the very private third floor quarters? So, Mr. Chairman, I agree that we ought to get on with the hearing.

The CHAIRMAN. Senator Simon, do you have a comment or an observation?

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. I just have a brief comment and then I am going to ask one question of all of the witnesses.

Senator Sarbanes used the word "innuendo." That is what is going around here all over the place. I really think we abuse the process. I understand—you know, Webb Hubbell says he did not have anything to do with it. Cross his name off. No interrogatories to Mrs. Clinton. We keep her name up there. It makes it look like we are really doing something. I am not saying that Democrats, from time to time, have not abused privileges in this body. But, I really think self-restraint is essential for a free system to work. The innuendo that is going around in these hearings day after day, and I am not picking on my friend from Missouri here, I think is not a healthy thing for the political process.

Let me just ask one question of each of the witnesses. Did Bill Clinton, as Governor, ask you to do anything unethical or illegal?

Mr. Proctor, if I can start down at that end.

Mr. PROCTOR. Not in any way.

Mr. DEWEY. No, sir.

Senator SIMON. Mr. Denton.

Mr. DENTON. Did Bill Clinton personally ask me? Is that the question, sir?

Senator SIMON. That is what I am asking you.

Mr. DENTON. For clarity, directly?

Senator SIMON. Pardon?

Mr. DENTON. For clarity, directly did Bill Clinton ask me to do anything improper?

Senator SIMON. All right.

Mr. DENTON. No.

Senator SIMON. But you are suggesting indirectly that you think things may have been improperly done?

Mr. DENTON. I would suggest that, perhaps.

Senator SIMON. Mr. Ritter.

Mr. RITTER. No, sir.

Senator SIMON. Mr. Patterson.

Mr. PATTERSON. No, sir.

Senator SIMON. Mr. Burge.

Mr. BURGE. No, sir.

Senator SIMON. All right. I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Today, we are going to explore with this panel the handling of a couple of loans that were related to an investment known as Whitewater Development Company.

Before we proceed, I want to bring to the attention of the Chairman and the panel one ground rule I think we all agreed upon, with respect to the questioning of Mr. Denton. We received a letter from the Independent Counsel requesting that we not question Mr. Denton about the banking practices of Madison Guaranty Savings & Loan because of the fact that there is a trial ongoing; and that he had been instructed not to answer questions about that matter. So I think both sides have agreed to honor that, and our focus with Mr. Denton today will be with respect to the Whitewater Development loan that occurred with Union Bank before 1984.

Mr. BEN-VENISTE. There were two letters, and perhaps we should make them a part of the record.

Mr. CHERTOFF. I think that probably makes sense.

Mr. Burge, let me start with you. You were affiliated with Citizens Bank & Trust of Flippin, Arkansas, in 1978?

Mr. BURGE. Yes, sir, I was.

Mr. CHERTOFF. What was your position?

Mr. BURGE. I was Senior Vice President.

Mr. CHERTOFF. How large was the bank?

Mr. BURGE. The bank was about \$15 million.

Mr. CHERTOFF. \$15 million?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. Mr. Burge, I will ask you just to pull the mike a little closer so we can hear you. Now in 1978, the record reflects there was a loan in the amount of \$182,000 that went to fund or finance a purchase of property called "Whitewater." I guess it was part of the Whitewater Development Corporation. Are you familiar with that loan?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. And would you describe that as one of the largest loans by your bank at that time?

Mr. BURGE. One of the larger loans.

Mr. CHERTOFF. How did that loan come to be made?

Mr. BURGE. The One-on-One River Development Corporation, which was a corporation made up of local individuals, purchased approximately 3,000 acres on the White River. As a part of the acquisition of that land, they sold certain parcels to a group of individuals—the number escapes me how many—but one of the individual groups that acquired the property, was Mr. McDougal and Mr. Clinton.

Mr. CHERTOFF. Now actually there were four people who were involved in that acquisition, who got the loan; right? They are Mr. and Mrs. McDougal and Mr. and Mrs. Clinton?

Mr. BURGE. That is correct.

Mr. CHERTOFF. Do you remember what Mr. Clinton's position in State government was at that time?

Mr. BURGE. He was the Attorney General and he was the Democratic Nominee for Governor of the State of Arkansas.

Mr. CHERTOFF. Who brought that loan to the bank?

Mr. BURGE. A realtor.

Mr. CHERTOFF. Who was that?

Mr. BURGE. Mr. Chris Wade.

Mr. CHERTOFF. Did Chris Wade have a position with the bank?

Mr. BURGE. He was on our Board of Directors.

Mr. CHERTOFF. So Chris Wade was a member of the Board of Directors, he was the one who went to the bank and brought the loan and requested the loan on behalf of the McDougals and Clintons?

Mr. BURGE. That is my recollection.

Mr. CHERTOFF. Was Mr. Wade also one of the participants in the underlying real estate transaction that you just described that resulted in the sale of part of the property to the McDougals and the Clintons?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. For the record, do you know if that is the same Chris Wade who has recently pled guilty as part of the Independent Counsel's investigation into various activities in Arkansas?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. Now, Mr. Burge, was there a downpayment for this loan of \$182,000?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. How much was that?

Mr. BURGE. Ten percent of the acquisition price.

Mr. CHERTOFF. And that would be about \$20,000?

Mr. BURGE. Correct.

Mr. CHERTOFF. Was that the standard practice for this kind of a loan you give to somebody to buy property to develop and to sell to require some kind of a downpayment?

Mr. BURGE. Yes, sir, it was.

Mr. CHERTOFF. And just so we are clear, this property that the McDougals and the Clintons were financing through your bank, they were not buying it for their own house, or houses, it was raw land that they were going to subdivide and try to sell?

Mr. BURGE. That's correct.

Mr. CHERTOFF. It was kind of a speculative real estate venture? They were essentially hoping to make money on the sale of the property; is that right?

Mr. BURGE. That is correct.

Mr. CHERTOFF. And their ability to finance it, or to pay back that debt depended significantly upon how well that project was operated; is that right?

Mr. BURGE. That is correct.

Mr. CHERTOFF. Now did you know that the downpayment, the \$20,000 downpayment, was borrowed from another bank at the time you made the \$182,000 loan?

Mr. BURGE. No, sir.

Mr. CHERTOFF. That was not disclosed to you at all?

Mr. BURGE. I didn't know about it.

Mr. CHERTOFF. Would that have made a difference to you?

Mr. BURGE. All factors being considered, it may have had an impact on our decision.

Mr. CHERTOFF. So, had you known the fact that the downpayment you received, the 10 percent, was itself a loan from another bank, that would have had some impact on your thinking?

Mr. BURGE. It may have.

Mr. CHERTOFF. Certainly it is something you would have wanted to be told?

Mr. BURGE. I'm sure.

Mr. CHERTOFF. Mr. Burge, am I right that the \$182,000 loan was actually too big a loan for a single project for your bank to make?

Mr. BURGE. Yes, sir; that's correct.

Mr. CHERTOFF. Explain why that is.

Mr. BURGE. At that time in Arkansas, most State banks were under a legal loan limit of capitalization at 20 percent of total capital. Again, the amount of capital in the bank escapes me at the present time, but our legal loan limit was probably about \$150,000 to \$160,000.

Mr. CHERTOFF. So you were not really in a position as a bank to make the entire value of the loan within your own bank?

Mr. BURGE. That's right.

Mr. CHERTOFF. \$182,000 was more than you were allowed to make?

Mr. BURGE. That's correct.

Mr. CHERTOFF. How did you deal with that?

Mr. BURGE. We participated in a portion of the loan.

Mr. CHERTOFF. Is that the same thing as saying you basically split the loan and another bank took up half the loan?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. What bank took up the other half of the loan?

Mr. BURGE. Union National Bank of Little Rock.

Mr. CHERTOFF. How did that bank come to be the one that was invited in to take half the loan?

Mr. BURGE. They were our major correspondent.

Mr. CHERTOFF. That means a bank in Little Rock with whom you had a relationship; right?

Mr. BURGE. That is correct.

Mr. CHERTOFF. Mr. Denton, you were at the Union National Bank of Little Rock in 1978?

Mr. DENTON. Yes.

Mr. CHERTOFF. What was your position at that point?

Mr. DENTON. Senior Vice President and Chief Lending Officer.

Mr. CHERTOFF. Do you remember a time that you learned about a loan that was going to be made for a real estate venture to be handled by the McDougals and the Clintons?

Mr. DENTON. Yes.

Mr. CHERTOFF. How did you first learn about that loan?

Mr. DENTON. I was approached by one of two individuals that were an emissary for the owner of the Bank, Herbert McAdams. I was informed that the two parties and their wives were purchasing real estate; that Union Bank was being asked to make a \$20,000 unsecured loan for the equity in that purchase. At the time, I understood that the balance of the purchase price would be carried by the seller. I was not aware another bank was involved in the transaction.

Mr. CHERTOFF. You were approached about the \$20,000 portion of the loan? Is that right?

Mr. DENTON. Yes.

Mr. CHERTOFF. You said there were two people, one of two people approached you on behalf of the owner. Who were the people you were referring to?

Mr. DENTON. It was either Gene Smith or Paul Berry.

Mr. CHERTOFF. What was their function or their position at the bank?

Mr. DENTON. They were both public relations officers that functioned as lobbyists, paid lobbyists on staff at the bank.

Mr. CHERTOFF. You mentioned an individual by the name of Paul Berry, whose name actually came up earlier in the year in connection with a discussion at the White House—I think it was in January 1994—about Beverly Bassett Schaffer. There was a list of people who might be sent down to Arkansas. Can you just tell us a little bit about Mr. Berry? You said he was a lobbyist for the bank?

Mr. DENTON. Yes. The reason I am uncertain as to which of those parties approached me is because Mr. Berry was employed at just about that time in 1978 by the bank to actually take over and learn the ropes from Gene Smith. Incidentally, Mr. Smith died shortly after that period of time. Paul Berry had previously been employed as a lobbyist for, I believe, the American Medical Association, had worked some for the Tyson Foods operation in Northwest Arkansas, and as I recall was a former roommate of Bill Clinton's.

Mr. CHERTOFF. Were you told by this emissary from the owner of the bank why the owner of the bank wanted you to grant this loan to the McDougals and the Clintons?

Mr. DENTON. I was informed that the basis of the loan was Bill Clinton, who was described at that point as an up and coming political star, a rising star in the State of Arkansas.

Mr. CHERTOFF. You were told that the owner of the bank wanted you to make the loan because it was to a group that included Mr. Clinton, and Mr. Clinton was viewed as having good political prospects. Is that right?

Mr. DENTON. That is accurate, yes.

Mr. CHERTOFF. Had you not gotten that instruction, would you, in your capacity as a bank officer, have approved an unsecured loan to Mr. McDougal and to Mr. Clinton and their wives?

Mr. DENTON. No.

Mr. CHERTOFF. Why not?

Mr. DENTON. I had previous banking experience with Mr. Jim McDougal, all of which had been very satisfactory, but all had involved the personal involvement of former Senator Fulbright. Senator Fulbright had guaranteed all the previous loans to Mr. McDougal. McDougal had a reasonably modest net worth and was not entitled to a \$20,000 unsecured credit, in my opinion.

Mr. CHERTOFF. You also indicated, Mr. Denton, you did not realize at the time you were involved in a \$20,000 loan; that there was going to be other loans and participation from other banks on portions of this loan. Is that correct?

Mr. DENTON. I was not aware of that. I had understood that the other loan would be carried by the seller of the property.

Mr. CHERTOFF. Did you receive financial statements in connection with this \$20,000 loan?

Mr. DENTON. I don't recall if I received one specifically on that loan. I had in the bank's possession current financial statements

from Mr. McDougal on existing loans. I did not receive a personal financial statement from Bill Clinton.

Mr. CHERTOFF. At some point, did some of the Bank Examiners, or regulators criticize the documentation underlying this particular loan to the McDougals and the Clintons?

Mr. DENTON. As I recall, within a year, perhaps a 2-year period, that loan was listed among other loans as being one poorly documented for having the absence of financial statements.

Mr. CHERTOFF. Mr. Denton, in this period of time generally, what was the philosophy of the bank and Mr. McAdams, the owner of the bank, concerning loans to political figures. Did he have a philosophy or a policy, or was there a philosophy or a policy at the bank about how to treat applications for loans from people who were politically powerful?

Mr. DENTON. I don't know if there was a stated policy regarding political loans. I would say that there was certainly not a formal, written policy in that regard.

Mr. CHERTOFF. Was there a practice?

Mr. DENTON. The practice was fairly well described. McAdams was actively involved in politics and had been for a number of years, and had a number of contacts in the political arena, and frequently extended credit to political entities.

Mr. CHERTOFF. Mr. Burge, I want to come back to you. At some point in 1978 the loan is out; the property is acquired. Your bank, the Citizens Bank, has about half of the loan, about \$90,000, and the other part of it is over at Union National Bank. Is that right?

Mr. BURGE. That's correct.

Mr. CHERTOFF. Did there come a point that you became concerned about the problem with the sale of the property that was supposed to be providing the income to pay back the loan?

Mr. BURGE. Yes, I did.

Mr. CHERTOFF. What was your concern?

Mr. BURGE. Well, there had been a period of time there had not been any sales at all on the property.

Mr. CHERTOFF. Did you take some steps to approach both the McDougals and the Clintons about requiring them to start paying off the principal of the loan because you were concerned that none of the principal was being paid?

Mr. BURGE. That's correct.

Mr. CHERTOFF. Tell us about that.

Mr. BURGE. I had a conversation I believe with Mr. McDougal and established a 10 percent principal reduction stipulation at the end of the current extension period before the bank would renew the loan again. It would basically work out to a 10-year amortization of the loan.

Mr. CHERTOFF. Did he make principal payments after that?

Mr. BURGE. To my knowledge, I think they did.

Mr. CHERTOFF. Do you know what the source of those payments was? Where he got the money?

Mr. BURGE. No, sir, I do not.

Mr. CHERTOFF. Do you know whether the land was starting to sell at any kind of a brisk pace?

Mr. BURGE. No, sir.

Mr. CHERTOFF. When did you leave, Mr. Burge? When did you leave the Citizens Bank?

Mr. BURGE. September 1980.

Mr. CHERTOFF. September of?

Mr. BURGE. 1980.

Mr. CHERTOFF. Mr. Ritter, you also had a relationship with the Citizens Bank at some point? Right?

Mr. RITTER. I did.

Mr. CHERTOFF. When did you join that bank?

Mr. RITTER. I thought it was September 1979, so maybe I'm—

Mr. BURGE. It was 1980.

Mr. CHERTOFF. Did you overlap with Mr. Burge to some degree?

Mr. BURGE. No. I left in September 1980. Mr. Ritter came on, and I stayed about 2 or 3 weeks for a transition period with him.

Mr. CHERTOFF. Mr. Ritter, so the torch was passed to you. What was your position at Citizens Bank after Mr. Burge left?

Mr. RITTER. CEO and President.

Mr. CHERTOFF. That's Chief Executive Officer?

Mr. RITTER. That's correct.

Mr. CHERTOFF. When you came to the bank, did you become familiar with this loan, which we will call for short-hand purposes, this "Whitewater loan"?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. And what was the condition of the loan when you came?

Mr. RITTER. To the best of my recollection, that it had been extended; but I thought that there were some documents still needed to be finished up on the extension at that time.

Mr. CHERTOFF. Would you agree with me that there was a problem with the documentation, and that this was a loan that you felt was among those that needed some attention?

Mr. RITTER. In general, yes.

Mr. CHERTOFF. Was there also a problem with the fact that there was no evidence that income from the sales of the lots was being used to reduce or pay off the loan?

Mr. RITTER. Not at that time, I didn't notice that. Later on, I think.

Mr. CHERTOFF. Tell us what you noticed about that later on.

Mr. RITTER. Well, since I'm off on the first date, I am not sure exactly when it was, but it must have been around 1982 that somewhere along the line I discovered that there were some differences that had occurred to the loan—to the ownership of the property. And the other is that there were some land sales, or I thought there were at that time. I know there were some other land sales on property close by that seemed to catch my attention that some property was being sold, and possibly there were some contracts that were in force at that time.

Mr. CHERTOFF. Can you explain a little bit more clearly why that would have caught your attention. Was there a concern that property was being sold but the proceeds were not being used to pay off the bank?

Mr. RITTER. That is correct.

Mr. CHERTOFF. Am I right in my understanding, that the original principal behind this loan was secured by a piece of property; you

expect that the McDougals and the Clintons are going to develop the property and sell it; and you anticipate that the income from the sales is going to be used to pay back the bank; right?

Mr. RITTER. That is correct.

Mr. CHERTOFF. That is kind of the basic principal of financing development; right?

Mr. RITTER. That is correct.

Mr. CHERTOFF. I guess you became concerned about two things at some point? Number 1 was lack of documentation? Right?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. Number 2 was a concern that perhaps there was property being sold but the money was not actually getting to you?

Mr. RITTER. That is correct.

Mr. CHERTOFF. Let me ask you and I know it is a tough question, but in terms of dealing with this loan, at this point were you aware, or was there a point where you became aware that Mr. Clinton was the Governor?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. Did that affect your dealing with this loan?

Mr. RITTER. I don't believe—well, it did in a way. Probably the way that it would any other really good customer of the bank. I considered it, yes.

Mr. CHERTOFF. Would you agree with me, it kind of made you walk softly, or maybe be a little bit more sensitive on how you dealt with this loan?

Mr. RITTER. Very much so.

Mr. CHERTOFF. Were the loan payments frequently past due?

Mr. RITTER. There was a lot of work to be done on it. I don't recall exactly when it was past due, but it seems to me that when it was due for renewal that the renewals were not made at the time that they should have been, either due to a lack of documentation or a lack of proper monies being paid for interest.

Mr. CHERTOFF. In connection with these renewals, I guess that would be at the end of every year or so there would be a requirement to renew the loan. You have indicated that there were some difficulties with that. Did you ever have a direct contact with either of the Clintons in connection with this loan?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. With whom?

Mr. RITTER. Both Mr. Clinton and Mrs. Clinton, at one time or another.

Mr. CHERTOFF. Would you tell us about those?

Mr. RITTER. The first that I recall would have been a contact with Mrs. Clinton and Mrs. McDougal early on in my career at Citizens Bank. I don't remember whether James McDougal was with them or not at that time, but I do remember the two ladies coming in, and I do remember the preparation to make sure that we looked pretty attractive as a bank to both of them. It was an event that would have been hard not to remember.

Mr. CHERTOFF. Tell us what happened? Did they both come in together?

Mr. RITTER. Yes, sir. However, I can honestly tell you that I don't remember exactly at that period of time—it has been quite awhile back—whether it was to renew a note, or—but I am sure it was—

and I believe it would have been somewhere about 1981 or somewhere in there. I remember where I was sitting in the middle office of the bank at that time. I remember the two ladies being attractively dressed, and Mrs. McDougal was hard to miss in those days, too. Other than that, I remember renewing the note and getting the signatures and a lot of cordialities, and good-bye.

Mr. CHERTOFF. Did they—

Senator SARBANES. Mr. Ritter, excuse me. I didn't catch that. Did you say this was in 1981?

Mr. RITTER. I don't remember exactly, Senator.

Senator SARBANES. About 15 years ago?

Mr. RITTER. Around there.

Senator SARBANES. OK.

Mr. CHERTOFF. Now, Mr. Ritter, you said there was a second time or a second occasion when you saw Mrs. McDougal and Mrs. Clinton together?

Mr. RITTER. Well, I thought I had, but that's a possible mistake. I don't know.

Mr. CHERTOFF. On the occasion you do remember seeing them together, did you have a discussion with them about the actual terms and conditions of the loan?

Mr. RITTER. Yes. At one time we discussed—and the one time I do remember is the time where usury had been changed. In Arkansas there was a relief from the original usury statutes which made us charge 10 percent at that time. I remember renewing the note at that time, or extending the note, or modifying it, whatever you prefer, and the rate of interest would have been higher—and I would have to see the records, but I have not referred to them—the rate of interest would have been significantly higher, going from say a 10 percent loan to a 17 or 18 percent loan.

I remember the discussion about it. There was a little bit of humor that went with it. After all the work that was done on changing the usury statute, we have to pay this higher rate of interest? But I assumed at that time it was more of an in-jest type of thing.

Mr. CHERTOFF. Who said that?

Mr. RITTER. I don't remember if it was Mrs. Clinton or Mrs. McDougal, but I think it was Mrs. Clinton.

Mr. CHERTOFF. So it is clear to you, at least in your discussions with Mrs. Clinton, you had discussions about the amount of interest; she was aware of the terms of the loan; she was aware of the interest rate; and you had a conversation with her about it?

Mr. RITTER. I presume she was aware of all that. I believe that she signed the document in my office, along with Mrs. McDougal.

Mr. CHERTOFF. Mrs. Clinton appeared generally knowledgeable to you about financial matters?

Mr. RITTER. There was nothing that indicated differently.

Mr. CHERTOFF. I am going to refresh your memory from your deposition at page 52:

Question: Did both ladies appear to be knowledgeable about the loan, about the real estate deal?

Answer: They seemed to be, and they seemed to be knowledgeable about the interest rate and everything else.

Mr. RITTER. That is true.

Mr. CHERTOFF. Did you also have telephone contact with Mrs. Clinton about the loan?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. On how many occasions?

Mr. RITTER. I don't remember how many, but at least once. And through her staff occasionally there was documents that were needed, so the follow-up would have been through there.

Mr. CHERTOFF. Would you agree with me that you thought Mrs. Clinton and Mrs. McDougal were both pretty sharp? They were fairly knowledgeable about real estate and the transactions?

Mr. RITTER. I had that impression; yes, sir.

Mr. CHERTOFF. Now still focusing on this loan, what is the concept of loan-to-value?

Mr. RITTER. Well, my opinion, of course, is probably different than my predecessors simply because I viewed it as speculative land for one thing, and probably would have expected more of a downpayment than that, but be that as it may we had it and now it was time to move on with it.

Mr. CHERTOFF. What you have alluded to is your assessment of this loan when you came in; that the value of the collateral was not really sufficient for the amount of money because it was based on a speculative—there was speculation involved in the underlying venture?

Mr. RITTER. As best I can remember back—it was been a long time ago—was that at that time, in my opinion, based on the sales price is what I was going on, it had nothing to do with a pure appraisal of the property or anything else—it was just 10 percent down, which was rather low for speculation.

Mr. CHERTOFF. You would have wanted a bigger downpayment?

Mr. RITTER. Normally, yes.

Mr. CHERTOFF. Did you know that the downpayment itself had been borrowed from another bank?

Mr. RITTER. Not that I remember.

Mr. CHERTOFF. Am I correct that fact would have increased your discomfort about the loan?

Mr. RITTER. Probably.

Mr. CHERTOFF. Now, Mr. Denton, let me get back to you and the downpayment, the \$20,000 unsecured loan. There came a point in 1980, that you became disturbed because the loan became due and no principal had been paid. Is that right?

Mr. DENTON. I think I became concerned before 1980. As I recall, it would have been the first annual renewal in June 1979.

Mr. CHERTOFF. Tell us about that?

Mr. DENTON. The original note was a 1-year maturity. There had been non-reduction at that maturity date. I had known that the loan was for equity in a real estate transaction. It became evident that the project was not generating sufficient cash to service the first mortgage as well as the equity loan. I then began to press Mr. McDougal for reductions in the indebtedness. I was told that funds were not available for that reduction. And as a result of that, in June 1979, I then came to place the note on shorter maturities, as I recall, 90 days, perhaps 6 months at that time.

Mr. CHERTOFF. Then what happened?

Mr. DENTON. Nothing happened. The loan was renewed a couple more times. Each time I began to increase the pressure on Mr. McDougal for reductions and/or a committed repayment program, none of which was forthcoming.

Mr. CHERTOFF. What happened in the end?

Mr. DENTON. As I recall, the last renewal was approximately December 1979, and the note was renewed for an additional 6-month maturity. In the interim, Mr. McDougal had become involved with another investor in an unrelated project in Little Rock, the acquisition of an apartment building and conversion to condominiums. The project was behind schedule and was not selling, so the bank found itself with two loans of Mr. McDougals' involvement that were creating problems. I increased my pressure for solutions to those loans and began asking Mr. McDougal to make other arrangements for liquidation of those loans.

Mr. CHERTOFF. Did he eventually use money from another source to pay off the loan? You insisted on that?

Mr. DENTON. I was under the impression that—let me backstep one other step. Mr. McDougal had become interested in acquiring the outstanding stock of the Bank of Kingston. It was a small bank up in North Central Arkansas. I, through the bank, had no interest in providing that acquisition loan because of the existing two loans, the apartment conversion and the equity loan with the Clintons.

So I indicated to Mr. McDougal that before the bank, the Union National Bank would entertain the new loan application, that those two problems had to be solved. And as a result of that, the \$20,000 loan was repaid; and the loan to McDougal and the other investor was liquidated. I understand it was moved to another financial institution thereby solving our bank's problems with those two loans. We subsequently did provide the financing for the Bank of Kingston.

Mr. CHERTOFF. I'm sorry. Finish.

Mr. DENTON. I was trying to go back to where I had sidestepped in answering your original question. I was under the impression that the \$20,000 loan that was in the name of McDougal and Clinton had been liquidated from the proceeds of a loan to the partnership that was doing the apartment complex development.

Mr. CHERTOFF. Is it your general impression Mr. McDougal was very good at moving money around and using loans from one institution to pay off money to another institution?

Mr. DENTON. I would restrain from describing it as "good," but he did it very frequently; yes. He was a user of—

Mr. CHERTOFF. I guess we should use "bad at it."

[Laughter.]

Let me ask you about this concept, Mr. Ritter, because we see a little bit of this already of going to different institutions and kind of taking a little here, and a little there, and moving it around. Did there come a point in 1982 that in order to pay off interest charges on the Whitewater loan at the Citizens Bank, that the Whitewater group took out a second loan from Citizens in order to pay the interest on the first loan?

Mr. RITTER. Without referring back to documents or notes, I believe that was correct.

Mr. CHERTOFF. Now tell us about that transaction as best you can recall?

Mr. RITTER. As best I can recall, I believe either Mr. McDougal or Mr. Wade had called and requested an extension of an additional \$20,000. I think the pressure might have been prior to that when we had a note due for renewal and I think I was trying to renew the note—and I am recalling back a long way at this time, Senator—

Mr. CHERTOFF. I am not a "Senator," but go ahead.

Mr. RITTER. Oh, I am sorry. The amount of money that would have been due at that time, there was a problem and I do not remember exactly what it was, but there was some reason that it could not be met. There was a request for additional money, and I was not sure that it was going to interest at that time that I recall back, if I had those notes I might be able to tell you a little bit better, but I think from what I have heard, just basically that is where it ended up going.

Mr. CHERTOFF. Is it an appropriate way to deal with interest on a loan, generally, to borrow money from one source, whether it be at the same bank or another bank, and use it to pay off interest due on another note?

Mr. RITTER. Probably not. Except I could go a little bit further on that. That is, there were certain things that probably occurred back in 1980 that would not occur today. The banking structure was a little bit differently then than now. I think at that time the most they required was identification of that particular event, rather than—it was just a red flag.

Mr. CHERTOFF. Our time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I am going to yield to Mr. Ben-Veniste, but I just want to sort of jump to the end, if I could, for a moment. Mr. Ritter, did these loans get all repaid in the end?

Mr. RITTER. I have no knowledge of that.

Senator SARBANES. Does anyone at the table have knowledge of that?

Mr. PROCTOR. Yes. They have all been repaid.

Senator SARBANES. They were all repaid?

Mr. RITTER. Yes.

Senator SARBANES. Was all the interest paid on them?

Mr. RITTER. Yes. Every penny.

Senator SARBANES. Every penny was paid?

Senator SARBANES. Then there was a loan that you talked about, Mr. Denton. Did that one get repaid?

Mr. DENTON. The \$20,000 loan?

Senator SARBANES. Right. I guess that is it.

Mr. DENTON. I referred to several loans, sir.

Senator SARBANES. I guess the \$20,000 loan. Did that get repaid?

Mr. DENTON. I can answer the question. The \$20,000 loan was repaid.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, panel.

Mr. Burge, let me start with you because, chronologically I guess you come first. The loan that you have testified about was made some 18 years ago. Is that correct?

Mr. BURGE. That is correct, 1978.

Mr. BEN-VENISTE. At the time, at the Bank of Flippin, what was the interest rate being charged on commercial loans of a similar nature?

Mr. BURGE. Ten percent.

Mr. BEN-VENISTE. Was the loan which was taken out with respect to the Whitewater property made at market?

Mr. BURGE. Yes, sir, it was.

Mr. BEN-VENISTE. In that respect, Mr. McDougal and Mr. Clinton—who was not at that point Governor Clinton—were charged the same rate as other commercial borrowers?

Mr. BURGE. That is correct.

Mr. BEN-VENISTE. What was the term of the loan?

Mr. BURGE. Well basically, it was a 6-month note with a debend feature.

Mr. BEN-VENISTE. It was for 6 months. Was that the normal practice at the time with respect to a commercial loan?

Mr. BURGE. At our bank it was.

Mr. BEN-VENISTE. Is that because, under the laws of Arkansas, the usury laws prevented banks from making higher-interest loans that would encompass a greater span of time? Was this short-term 6-month commercial loan a way of ensuring that if interest rates rose, the bank would be protected by increasing the rate of interest charged the next time the loan would be renewed?

Mr. BURGE. Partly.

Mr. BEN-VENISTE. Was that the normal course for commercial lending practices at that time, in Arkansas, and at your bank, for short-term loans to be made and then renewed on a more or less regular basis?

Mr. BURGE. Yes, sir, they were.

Mr. BEN-VENISTE. Your bank made loans to others who were in the real estate development business. Is that correct?

Mr. BURGE. That's correct, sir.

Mr. BEN-VENISTE. So in that respect, this loan was not unusual?

Mr. BURGE. No, sir, it was not unusual.

Mr. BEN-VENISTE. And as we have heard, the loan was eventually paid off; correct?

Mr. BURGE. That's the way I understand it.

Mr. BEN-VENISTE. Now with respect to you, Mr. Denton, is it correct, sir, that Mr. McDougal had a prior history of borrowing from the bank at which you were then employed?

Mr. DENTON. Yes.

Mr. BEN-VENISTE. And, Mr. McDougal had, I take it, up to that point in 1978, repaid the loans which were made to him?

Mr. DENTON. Had either repaid, was in the process of repaying, or prospects were adequate that the absence of repayment was of no concern.

Mr. BEN-VENISTE. It was your bank that participated with Mr. Burge's bank in taking the second part of the larger loan; correct?

Mr. DENTON. Yes.

Mr. BEN-VENISTE. That loan was put before the Bank's lending committee, I take it. Was there an executive committee that met at your bank and passed on loan applications?

Mr. DENTON. Not at that time, no.

Mr. BEN-VENISTE. Who participated in the approval of that loan?

Mr. DENTON. That loan was handled by a department that is referred to as the "Correspondent Banking Department."

Mr. BEN-VENISTE. That would have been run past the president of the bank?

Mr. DENTON. That's handled through the Correspondent Banking Department. Mr. Howard Qualls was the Senior Vice President in charge of that department.

Mr. BEN-VENISTE. He had the authority to sign off on that loan?

Mr. DENTON. That is accurate.

Mr. BEN-VENISTE. So at some point, all of this at your bank merged, the \$20,000 and—what was the exact amount of the participating amount?

Mr. DENTON. Ninety-one thousand-and-some-odd dollars.

Mr. BEN-VENISTE. Thereafter, these loans were renewed. Were they renewed at market, do you know, Mr. Burge?

Mr. BURGE. Yes, sir.

Mr. BEN-VENISTE. Is there anyone here who has reason to believe that the rates that were charged were somehow out of line with commercial loans at that time?

Mr. PROCTOR. No, sir. At this time the rates were all pretty much to the maximum because we were under the usury. So everyone had to pay in the State at that time, is I recall, gentlemen, about the maximum rate to be able to support the other type lending that we did.

[No dissent is heard.]

Mr. BEN-VENISTE. Hearing no dissent, let me ask this question, Mr. Ritter. Did there come a time when interest rates rose dramatically?

Mr. RITTER. That is correct.

Mr. BEN-VENISTE. Did they, indeed, rise above 20 percent?

Mr. RITTER. Yes.

Mr. BEN-VENISTE. This resulted, therefore, in the increase in the interest rate charged on this loan?

Mr. RITTER. It did, based on the discount rate, or the window rate, rather, than the true prime rate.

Mr. BEN-VENISTE. Well, all of the rates rose pretty much in proportion at that time.

Mr. RITTER. That's correct.

Mr. BEN-VENISTE. So, there was a greater squeeze on all developers who had borrowed money in order to finance real estate development projects. Is that correct, sir?

Mr. RITTER. That is correct.

Mr. BEN-VENISTE. I take it that across the board in Arkansas as well as the rest of the country that put a squeeze on businessmen who had to borrow money and then pay off loans at a higher rate than they had initially bargained for when they first took out the loans?

Mr. RITTER. That is correct.

Mr. BEN-VENISTE. So it is not unexpected that there may have been some late repayment of loans across the board in Arkansas at the time?

Mr. RITTER. That is also correct.

Mr. BEN-VENISTE. Now, Mr. Denton, you are not at this time employed in banking, are you, sir?

Mr. DENTON. No, I am not.

Mr. BEN-VENISTE. Mr. Chertoff made reference to your relationship with the Independent Counsel's Office. Let me ask you, sir, whether you have been prosecuted by the Independent Counsel?

Mr. DENTON. No.

Mr. BEN-VENISTE. Were you granted immunity from prosecution?

Mr. DENTON. I was granted use immunity.

Mr. BEN-VENISTE. Was that at your request?

Mr. DENTON. Yes.

Mr. BEN-VENISTE. That immunity provides that you will not be prosecuted for anything that you reveal to the Independent Counsel other than for perjury or obstruction of justice. Is that correct?

Mr. DENTON. That is accurate.

Mr. BEN-VENISTE. Let me ask you, prior to your deposition that was taken recently, whether you have had any contact with any staff member of this Committee?

Mr. DENTON. I have not, prior to yesterday.

Mr. BEN-VENISTE. Now let's go through the chronology starting in, I guess it goes all the way back to 1978. Let's start with the Union National Bank. According to the Pillsbury Madison Report, that loan was repaid on June 23, 1980. Is that correct?

Mr. DENTON. That is my understanding; yes.

Mr. BEN-VENISTE. With respect to the Citizens Bank loan, that loan was repaid in 1992. Is that correct, Mr. Proctor?

Mr. PROCTOR. Yes.

Mr. BEN-VENISTE. What we have had here is a confluence of two panels, which makes it a little bit more difficult. Yesterday, we only had one witness, so that was easier to keep straight. Today, we have two panels merged into one. So we will have to deal with this as best we can. Mr. Proctor, when did you come into the picture with respect to these loans?

Mr. PROCTOR. I started at the bank in November 1981, but did not actually start working on the loan until approximately 1983 or 1984.

Mr. BEN-VENISTE. In your view, did this loan receive special preferential attention and treatment?

Mr. PROCTOR. I think that any time a small bank in our community has a loan outstanding to, in this case, something of a celebrity, that would receive attention from both internal officers as well as people outside of the bank, as auditors or examiners would look at that loan, as well.

Mr. BEN-VENISTE. With that in mind, the fact is that it would receive special attention both from auditors and the higher-ups at the bank. Can you say whether there was any favors given, whether there was any impropriety associated with the making or the monitoring of these loans?

Mr. PROCTOR. Well, of course, now, I was not there when the loan was made, but I will discuss the monitoring of it. We were forced to—not "forced," but we maintained a loan probably better than most loans in the bank because we knew of the attention that it would receive as far as file memos, attempting to keep it prop-

erly documented with financial statements—so, yes, we paid very close attention to it.

Mr. BEN-VENISTE. So if I understand what you are saying, other borrowers might have been cut a little bit more slack because they might not have been receiving the same kind of scrutiny?

Mr. PROCTOR. I would agree.

Mr. BEN-VENISTE. Now, Mr. Denton, you are not suggesting that other unsecured loans were made at the time of this \$20,000 loan 18 years ago, are you?

Mr. DENTON. To other parties, other borrowers?

Mr. BEN-VENISTE. Yes. Other borrowers.

Mr. DENTON. Oh, an unsecured loan is the easiest type of loan to make.

Mr. BEN-VENISTE. And \$20,000 was not a huge amount of money for an unsecured loan in your banking experience?

Mr. DENTON. No.

Mr. BEN-VENISTE. At the very time that the unsecured loan was being made to Mr. McDougal and Mr. Clinton, your bank was making other unsecured loans to other borrowers?

Mr. DENTON. That's accurate.

Mr. BEN-VENISTE. This loan was repaid in a timely way?

Mr. DENTON. No.

Mr. BEN-VENISTE. It wasn't repaid in a timely fashion?

Mr. DENTON. No.

Mr. BEN-VENISTE. What was the problem?

Mr. DENTON. The loan was renewed numerous times with repeated requests for reductions which were not forthcoming.

Mr. BEN-VENISTE. Pardon me?

Mr. DENTON. The loan was renewed a number of times. There were requests for reductions which were not forthcoming, so that certainly could not be described as repaid in an orderly fashion.

Mr. BEN-VENISTE. Well, let's break this down. First of all, was all the interest ultimately paid on the \$20,000 loan?

Mr. DENTON. Yes, ultimately.

Mr. BEN-VENISTE. It was all paid, at market rate?

Mr. DENTON. I don't know—

Mr. BEN-VENISTE. Do you have reason to believe it wasn't, Mr. Denton?

Mr. DENTON. Yes. Knowing the history of rates in Arkansas, I am confident that it was not at market some of those times.

Mr. BEN-VENISTE. All right, let's break it down. Which ones do you claim were made below market?

Mr. DENTON. Sir, I don't know what national rates were in the particular time. I haven't researched it. I certainly could, but I just don't have that—

Mr. BEN-VENISTE. Why are you using national rates? Was that the basis upon which your bank made the loans?

Mr. DENTON. Yes, sir. Basically we structured credits based on the cost of funds which were acquired in the national bank system.

Mr. BEN-VENISTE. If you are making an allegation here that there was favoritism, let's get chapter and verse.

Mr. DENTON. I don't recall making an "allegation." I answered your question about if it was national rates.

Mr. BEN-VENISTE. Well, I asked you whether it was made at market rates.

Mr. DENTON. Market rates.

Mr. BEN-VENISTE. By "market rate," I mean, the rate your bank was charging contemporaneously with the renewal.

Mr. DENTON. I charged the legal maximum of 10 percent. The loan was granted at 10, which is the absolute greatest rate the bank can charge at the time. It was renewed at that time. Subsequently, there was Federal override legislation that permitted some greater rates. As I recall, even those overrides did not permit a rate equal to, which would have been market rate.

Senator SARBANES. Now are you setting out the market rate as something different from the legal limit rate in Arkansas?

Mr. DENTON. Yes, sir.

Senator SARBANES. You could not charge the market rate; right?

Mr. DENTON. No, sir.

Senator SARBANES. You could not charge these people anything other than the legal limit rate; is that correct?

Mr. DENTON. That's correct.

Senator SARBANES. Or anyone else?

Mr. DENTON. That is accurate.

Senator SARBANES. No other borrower.

Mr. DENTON. That is accurate.

Senator SARBANES. These people were charged the legal limit rate, were they not?

Mr. DENTON. That's accurate.

Senator SARBANES. Just like any other borrower?

Mr. DENTON. Not just like any other borrower, but they were charged the legal, maximum rate permitted in Arkansas at that time.

Senator SARBANES. That is right. So your reference to "market rate," is really irrelevant because it wasn't available to you under Arkansas law to charge the national market rate; correct?

Mr. DENTON. No, sir. That's incorrect.

Senator SARBANES. Why is it?

Mr. DENTON. Many times persons were not given access to credit because of those restrictions, the Arkansas restriction. That was a big argument in the State that subsequently permitted an override of that Constitutional limitation.

Senator SARBANES. No, no. But if you made a loan, the maximum rate you could charge on that loan was set by the Arkansas law, was it not?

Mr. DENTON. Yes, sir.

Senator SARBANES. Wasn't that true in every bank?

Mr. DENTON. Yes.

Senator SARBANES. In Arkansas?

Mr. DENTON. Yes.

Senator SARBANES. All right.

Mr. BEN-VENISTE. And your bank was in the business of lending money; is that correct?

Mr. DENTON. Yes.

Mr. BEN-VENISTE. Are you suggesting you lost money every time you made a loan to someone at the maximum rate?

Mr. DENTON. Yes. Would you ask the entire panel that question?

Mr. BEN-VENISTE. OK. I will be educated. Everyone was losing money by lending money at the maximum rate?

Mr. RITTER. That is correct.

Mr. BEN-VENISTE. Mr. Patterson, did you have a moratorium and try to close your doors so that no one else could do business?

Mr. PATTERSON. For a certain period of time there was a position that Arkansas was at a disadvantage with the Nation, everybody in Arkansas, and probably we would not have made loans to somebody out of the State of Arkansas, and we would have only serviced loans that were people that we realistically thought were our customers.

Mr. BEN-VENISTE. OK, and this——

Mr. PATTERSON. But this was for a window of time, which——

Senator SARBANES. That was only when the national rates moved up to very high levels. That lasted only for a limited period of time. Is that not correct?

Mr. PATTERSON. Well, I agree with the theory that you are saying. We were at risk for a far longer period of time, but this loan was the same as all other loans was what I thought we were trying to ascertain.

Mr. BEN-VENISTE. That is the point. Whether there was favoritism because a rate was charged below what others were paying? As this process of renewing the loans on a short-term basis went forward, and as rates eventually came down, I take it you went back into a profitable mode with respect to your lending practices.

If on the other hand, the banks in Arkansas had stopped extending credit, had called all the loans of all of their business clients on commercial loans, there would have been pandemonium.

Mr. PATTERSON. There was pandemonium.

Mr. BURGE. Our economy became very stagnant.

Mr. BEN-VENISTE. All right——

Mr. PATTERSON. Let me explain that Federal funds got to 30 percent, and our customers were charged 10. But that has nothing to do with what I understanding we were discussing here.

Mr. BEN-VENISTE. When these loans were taken out in the first instance, the rates were more in line with your traditional rate of return. Correct?

Mr. PATTERSON. At the concept, the loans were in perfect line, in 1978.

Mr. BEN-VENISTE. So that the increase in the national interest rates at this time was not anticipated at the time the loans were taken out, and certainly not as a way to somehow borrow money below a national rate and make some kind of a killing. Is that fair to say, Mr. Burge?

Mr. BURGE. Yes. Yes, you are correct.

Mr. BEN-VENISTE. If someone had had a crystal ball to anticipate that rates would go from 10 to 21 percent, they could have made a lot more money than blowing money on the Whitewater Development project which lost money.

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. Mr. Ritter, I guess you have sort of underlined the problems of going back 18, 15, 17, 13 years ago. It was a pretty big deal for you to become the CEO of the bank at the time.

Mr. RITTER. It was, but the date was 1980 and not 1979.

Mr. BEN-VENISTE. So even with respect to an important day in your life, you were a year off, no one is faulting you on that. This, to me, sort of underlines the fact that we go after these dates with a scalpel expecting that people can have a precise recollection of events that happened so long ago. That is just not the way the world works, and not really the application of common sense to what were transactions of a far more mundane nature back 2 decades ago.

While I am with you, Mr. Ritter, is it correct that your contacts with Mrs. Clinton and Mrs. McDougal as to the way that the loans were renewed suggested nothing improper or unprofessional in terms of your understanding of the transactions, or your involvement personally?

Mr. RITTER. Right. Number 1, they were limited. Number 2, it just was not.

Mr. BEN-VENISTE. Mr. Burge, did you understand when the loan was taken out that Mr. McDougal was the primary partner involved in this transaction?

Mr. BURGE. Yes, sir.

Mr. BEN-VENISTE. Your dealings were primarily with McDougal, I take it?

Mr. BURGE. Yes, sir.

Mr. BEN-VENISTE. Had you had any contact with Mr. Clinton prior to the time that this became a matter that the news media took an interest in?

Mr. BURGE. No, sir.

Mr. BEN-VENISTE. So all the time up until then, all of the contact you had was with Mr. or Mrs. McDougal?

Mr. BURGE. Primarily Mr. McDougal.

Mr. BEN-VENISTE. All information of a financial nature that you received was from Mr. McDougal? Is that correct?

Mr. BURGE. That is correct.

Mr. BEN-VENISTE. Mr. Ritter, you dealt primarily with Mr. McDougal, as well, I take it?

Mr. RITTER. That is correct.

Mr. BEN-VENISTE. Do you recall whether either Mr. or Mrs. Clinton ever called you directly with respect to the status of the loan?

Mr. RITTER. I do not recall either one of them calling me directly.

Mr. BEN-VENISTE. Do you recall any occasion in which you have a specific recollection of discussing a loan with Mr. Clinton?

Mr. RITTER. I do remember getting a signature from him one time that we needed on a document. To the precise time, I can't tell you when.

Mr. BEN-VENISTE. But other than that, you do not recall on that occasion that there was any extensive discussion or even substantive discussion about the loan itself, other than—

Mr. RITTER. Not the loan itself, because I think that all we were needing was documentation at this point.

Mr. BEN-VENISTE. Mr. Patterson, do you recall ever meeting with Mr. or Mrs. Clinton?

Mr. PATTERSON. No, sir.

Mr. BEN-VENISTE. Your dealing, to the extent you had any dealings with the principals, was with Mr. McDougal?

Mr. PATTERSON. Yes, sir.

Mr. BEN-VENISTE. And Mr. Denton, your dealings were solely with Mr. McDougal?

Mr. DENTON. Yes. But I had one brief meeting with Bill Clinton, however.

Mr. BEN-VENISTE. According to the Pillsbury Madison Report, Mr. Chairman, at page 24 of the April 24, 1995:

So far as anyone can determine from the available documentary evidence, little Whitewater financial information was transmitted to the Clintons. However, the Clintons did sign documents in connection with various loans and loan extensions. Letters to or from the Clintons were relatively infrequent. Available documents suggest that the Clintons wrote or received less than 20 letters pertaining to Whitewater between the project's inception in 1978 and the end of 1986.

Now in terms of the approval of the initial loan, Mr. Burge, is it correct, sir, that in your view Mr. Clinton's involvement was of no material importance?

Mr. BURGE. That's correct.

Mr. BEN-VENISTE. As far as you were concerned, the point of contact and the individual with whom you were concerned, in connection with making this loan, was Mr. McDougal and his record?

Mr. BURGE. That is correct.

Mr. BEN-VENISTE. At the point when the loan was made, is it correct that Mr. McDougal had enjoyed a good reputation in terms of being profitable in real estate development?

Mr. BURGE. That is correct.

Mr. BEN-VENISTE. In terms of his creditworthiness at the time, did you have information that led you to believe he was a good credit risk?

Mr. BURGE. Past performance.

Mr. BEN-VENISTE. That led you to conclude that he would be a good credit risk, I take it?

Mr. BURGE. That's correct.

Mr. BEN-VENISTE. The confidence, in connection with the making of the loan, was borne out by the fact that the loan was ultimately repaid?

Mr. BURGE. That's correct.

Mr. BEN-VENISTE. I take it that during this period of time there were a substantial number of business failures of commercial loans and loans which could not be repaid?

Mr. BURGE. I'm sure there was.

Mr. BEN-VENISTE. Mr. Ritter, I take it that is the experience that you saw in Arkansas, as well?

Mr. RITTER. I guess I was not listening as closely as I should.

Mr. BEN-VENISTE. At the time that the Whitewater loan was being serviced and repaid, were there other commercial loans, substantial loans, which led to bank failures throughout the United States, loans that were not repaid and that caused the banks to lose substantial funds.

Mr. RITTER. I presume that is correct.

Mr. BEN-VENISTE. There were all kinds of workouts, reductions, extensions during this period of time?

Mr. RITTER. There could have been. I am just not knowledgeable about the rest of the world.

Mr. BEN-VENISTE. Mr. Patterson, can you comment on that?

Mr. PATTERSON. I believe the record would show that there were many failures in the Nation.

Mr. BEN-VENISTE. Mr. Proctor.

The CHAIRMAN. Richard, what are we doing?

Mr. PROCTOR. Yes, sir. This—

The CHAIRMAN. Oh, come on.

Mr. PROCTOR. —was typical of the time.

The CHAIRMAN. You know, this is well beyond now. Counsel, do you have more relevant questions to ask? The history of the bank failures during that period of time is well documented. Do you have a particular question as it relates to the record to ask these witnesses? We know it. It is well established. Please, let's try to stay on the issues that you want to develop. Continue.

Mr. BEN-VENISTE. Well, Mr. Chairman—

The CHAIRMAN. I am not going to permit us to continue to waste time. I will tell you, if we are going to be asking about bank failures during this period of time, let the record demonstrate you can put anything in there that you want and we will take it. You can read it publicly.

There were numerous bank failures; numerous people did not pay. If you want to address related issues as to the status of the loan, how it came about, whether or not it was kept, that is only appropriate. But, please, let us attempt to move this thing along.

Senator SARBANES. Well, Mr. Chairman, I think it is important to draw from these witnesses the important testimony that, while this loan was in the end paid in full, there were other loans that were made at the time by these respective bankers upon which there was default.

The CHAIRMAN. We take note. There were many of them.

Mr. BEN-VENISTE. I think it is relevant, Mr. Chairman, in this way. There has been questioning as to whether every payment was made on time; whether every dollar that was collected from the sale of property was paid to reduce the principal. It is as though we are looking in a vacuum. We are not looking in a vacuum. We are looking at very tough economic times for borrowers in Arkansas and other parts of the country. When we focus on whether there was an extension of 3 months or some such period of time before interest payments were caught up, I think we have to look at that in the context of what else was going on. And in that respect, I think it is quite relevant, most respectfully, Mr. Chairman.

The CHAIRMAN. The point has been well made. Can we move on?

Mr. BEN-VENISTE. Let's move to your side, if we may.

Senator SARBANES. The red light is on.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Denton, Senator Simon asked you a question earlier about whether the President asked you to do something illegal, indirectly. Could you elaborate on that, sir? What did he ask you to do, and through whom?

Mr. DENTON. Sir, I was attempting to make sure I understood the question. I did not recall that it was limited to being illegal. My thought process was that many times transactions occurred that the instructions or requests did not come directly from Bill Clinton. As an example, the \$20,000 loan that Union Bank made

came to me through an emissary, and perhaps through a couple of them before I received it. That was my point I was attempting to make. In my opinion, that was not an acceptable banking practice in extending that loan.

Senator FAIRCLOTH. Who asked you to extend the loan?

Mr. DENTON. An emissary for the owner of the bank asked that that loan be granted.

Senator FAIRCLOTH. An emissary for the owner of the bank came to you an executive officer of the bank?

Mr. DENTON. That is correct.

Senator FAIRCLOTH. Let me follow this now. The owner of the bank sent you word that you ought to extend this loan?

Mr. DENTON. That is correct; yes.

Senator FAIRCLOTH. As executive of the bank, you didn't think the loan ought to be extended?

Mr. DENTON. I'm sorry? I did not understand the last words.

Senator FAIRCLOTH. You did not really think this loan should be extended?

Mr. DENTON. The point I make, in distinction, sir, is that had it been an arms' length loan by a client walking in off the street, I likely would not have granted that loan.

Senator FAIRCLOTH. In other words, if the order had not come down from the owner of the bank, you would not have extended the loan; you would have foreclosed?

Mr. DENTON. Well, a number of circumstances would have entered into that picture. The loan, with the information that I had in hand and with the financial information of the borrowers that was supplied to me, under those conditions that loan would not have been granted.

Senator FAIRCLOTH. Who came to you?

Mr. DENTON. It was either Gene Smith or Paul Berry who were employed by the bank and worked directly for Herbert McAdams, the owner.

Senator FAIRCLOTH. Did the person that came to you, Gene Smith or the owner himself, ever tell you why he especially wanted this loan extended? The reason to make an exception here?

Mr. DENTON. On this particular loan, sir?

Senator FAIRCLOTH. Yes.

Mr. DENTON. As I recall, the emissary indicated to me that the loan was to be granted because Bill Clinton was an up and rising star in the political arena in Arkansas.

Senator FAIRCLOTH. Was he the Governor at that time?

Mr. DENTON. No, sir, he was the Attorney General.

Senator FAIRCLOTH. So it was granted for political reasons. Are you aware whether Mr. McDougal was promised or given anything by Bill Clinton in exchange for the fundraiser that he held?

Mr. DENTON. No, sir, I am not aware of any direct consideration that changed hands.

Senator FAIRCLOTH. How about indirectly?

Mr. DENTON. I do know that Mr. McDougal operated in that manner. It was not uncommon for favors to be passed about by the parties involved.

Senator FAIRCLOTH. Bill Clinton?

Mr. DENTON. Bill Clinton's emissaries, I again had no direct contact with Bill Clinton. I had, as I recall, perhaps three very brief contacts with Bill Clinton, and certainly no extended discussions regarding any subjects.

Senator FAIRCLOTH. But it was common practice for favors to be granted?

Mr. DENTON. I don't know how common it was. It certainly was not infrequent.

Senator FAIRCLOTH. Do you think the leasing of the space by the Arkansas Development Finance Agency was connected to this?

Mr. DENTON. I think that it was one of those favors that was extended, yes. I have no evidence that would support that. It is simply an observation that I would make.

Senator FAIRCLOTH. Are you aware of whether Mr. or Mrs. Clinton had a loan with Madison Guaranty or were a co-signer or a guarantor of any loans there?

Mr. DENTON. I think I have been asked not to address Madison-related transactions, sir.

Senator FAIRCLOTH. By whom?

Mr. DENTON. By the Office of the Independent Counsel.

The CHAIRMAN. Senator—

Senator FAIRCLOTH. That concludes me.

The CHAIRMAN. Senator Bennett.

[No response.]

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate you accommodating my timeframe.

I am going to refer a question to Mr. Burge relative to an appraisal that is dated August 1978. I believe it bears your signature listing the value of 1,100 acres at \$242,000. I wonder if this exhibit is available for Mr. Burge to look at and comment on?

The CHAIRMAN. Do we have a copy of that for the Minority?

Senator MURKOWSKI. Mr. Burge, are you familiar with this?

Mr. BURGE. I don't think I have a copy of that, Senator.

The CHAIRMAN. Can we see if we can get them? We will get copies made and see if we can proceed along another line.

[Document distributed.]

Senator MURKOWSKI. What I am interested in, Mr. Burge, is a description of the land that was taken as collateral. As I understand it, there was an effort by the two banks involved, Union and Citizens, because of an overline. Who was the lead bank on the credit, Mr. Burge?

Mr. BURGE. Our bank was, Citizens Bank & Trust.

Senator MURKOWSKI. Citizens Bank. So you took what, \$91,000 or \$90,000, or something of the original loan. Then you had a participation with Union?

Mr. BURGE. That's correct.

Senator MURKOWSKI. But you are the lead bank, so you basically sold them \$91,000 of the credit. Right?

Mr. BURGE. That is correct.

Senator MURKOWSKI. And you maintained the files and the documentation?

Mr. BURGE. That is correct.

Senator MURKOWSKI. You did the appraisal?

Mr. BURGE. Yes, sir, I did.

Senator MURKOWSKI. Describe the land you used as a basis for the loan? In other words, you took a mortgage, a deed of trust, I assume?

Mr. BURGE. There was a mortgage. The property was approximately 230 acres on the White River. It also fronted part of the Crooked Creek area.

Senator MURKOWSKI. What did it have on it?

Mr. BURGE. It was timber. Very little vacant or open——

Senator MURKOWSKI. Commercial timber?

Mr. BURGE. Not in the sense of pine. It was hardwood.

Senator MURKOWSKI. Well, you are a banker. Would you consider it improved or unimproved property?

Mr. BURGE. It was unimproved property.

Senator MURKOWSKI. Unimproved property. What is the policy of your bank on loans on unimproved property?

Mr. BURGE. My current bank?

Senator MURKOWSKI. No, when you were with Citizens?

Mr. BURGE. We were a rural bank, and we lent on any type of real estate around that was——

Senator MURKOWSKI. Improved or unimproved?

Mr. BURGE. Improved and unimproved.

Senator MURKOWSKI. Did you require any equity contribution?

Mr. BURGE. Yes. We always did.

Senator MURKOWSKI. And in this case, was there an equity contribution?

Mr. BURGE. Yes, sir.

Senator MURKOWSKI. From what source?

Mr. BURGE. From the principals.

Senator MURKOWSKI. The principals? You didn't question where the principals got that money?

Mr. BURGE. No, sir, we didn't.

Senator MURKOWSKI. Where did the principals get that money?

Mr. BURGE. I found out like everybody else that they borrowed the money from Union National Bank.

Senator MURKOWSKI. Now let me turn to Union National Bank.

Senator SARBANES. Just to be clear, Frank, when did you find that out? Here recently?

Mr. BURGE. I read it in the newspaper.

Senator SARBANES. You didn't know that at the time.

Senator MURKOWSKI. Let's go to Union Bank because Union took \$91,000 of the loan as a participant and basically purchased that and reimbursed Citizens. Right?

Mr. BURGE. Yes, sir.

Senator MURKOWSKI. Did you have a copy of the appraisal of the land? I am talking to Mr. Denton, I believe.

Mr. DENTON. Sir, I directly was not involved with that loan. It was handled by the bank in which I was employed, but I had——

Senator MURKOWSKI. Who was involved in that loan?

Mr. DENTON. The documents reflect a Morris Jackson handled the paperwork, and accepted and signed the loan participation.

Senator MURKOWSKI. Have we taken the deposition of that gentleman?

Mr. CHERTOFF. Of Marlin Jackson?

Senator MURKOWSKI. Yes.

Mr. CHERTOFF. Yes, we have, Senator.

Senator MURKOWSKI. Do we have any—

Mr. COLE. Excuse me? Morris Jackson? I think there is a misunderstanding here.

Mr. DENTON. I think Morris Jackson is deceased.

Mr. CHERTOFF. Obviously, we did not take his deposition.

Senator SARBANES. I don't think we took his deposition.

Senator MURKOWSKI. Obviously, we didn't.

Mr. Denton, let's get back, specifically, to the loan that your bank participated in. Were you at the bank at that time?

Mr. DENTON. Yes, sir.

Senator MURKOWSKI. You knew of the purchase of this loan from Citizens?

Mr. DENTON. The minutes reflect that it was reported in one group that I attended. I do not specifically recall it.

Senator MURKOWSKI. Well, you were the Senior Lending Officer at that time. I assume as a Senior Lending Officer your responsibilities were to review the loans of the bank and report to the Board of Directors. Those loans would be reflected in the minutes of the Board of Directors.

Mr. DENTON. That is accurate.

Senator MURKOWSKI. So are you suggesting you have no knowledge of the purchase?

Mr. DENTON. No, sir. I am suggesting that I was not involved in the origination of the loan, and I do not recall what documents were supplied by the other loan officer.

Senator MURKOWSKI. Your initials do not appear on the note? Is that correct?

Mr. DENTON. I am sorry, sir?

Senator MURKOWSKI. Your initials do not appear anywhere on the note?

Mr. DENTON. That is accurate.

Senator MURKOWSKI. Are you aware of the \$20,000 loan that was made for the downpayment by your bank?

Mr. DENTON. Yes, sir. I was responsible for that.

Senator MURKOWSKI. You were responsible for that.

Mr. DENTON. Yes.

Senator MURKOWSKI. Isn't it rather unusual that two banks would work together, and the originating bank would not know that the purchasing bank had made a \$20,000 loan so that the terms and conditions of the downpayment would be met? Obviously your bank, Union, had knowledge that you were purchasing the balance of the loan for \$91,000 from Citizens Bank. Then, in order for that to qualify, you made a separate \$20,000 loan for a downpayment on unimproved land. We all know something about rural banking and risks and downpayment and equity, and this obviously was a way to get around that, was it not?

Mr. DENTON. I am not sure what the intent was, sir. I was not involved.

Senator MURKOWSKI. The intent was to get around the equity requirement. We all know what equity is. Somebody puts up something out of their own pocket. Between your two banks, what you folks did was 100 percent financing. Is that not correct?

Mr. DENTON. That was the end result, yes.

Senator MURKOWSKI. You financed the entire purchase price. So neither the Clintons nor the McDougals had a nickel in it.

Mr. DENTON. That is accurate.

Senator MURKOWSKI. Is that good banking practice?

Mr. DENTON. It could be. It happened frequently.

Senator MURKOWSKI. It happened frequently? Is it good banking practice?

Mr. DENTON. I think history would—

Senator MURKOWSKI. What would the Examiners say if they came into your institution and you said that there was \$20,000 equity put in, and they found out that you had loaned that equity? What would they do to that loan? Would they classify that loan?

Mr. DENTON. Probably not, in a bank of our size and a loan of that size.

Senator MURKOWSKI. How about a bank like Citizens?

Mr. DENTON. Very likely, yes.

Senator MURKOWSKI. They would classify it?

Mr. DENTON. Yes.

Senator MURKOWSKI. I mean, it is no secret here, gentlemen. This was an effort to make an accommodation, to get around the equity requirement, and finance at 100 percent. The two banks split it up. You know it as well as I do. Do you deny you are suggesting that is prudent or regular banking practice you say that that is regular banking practice, appropriate banking practice? You did it all the time?

Mr. DENTON. No, sir, I did not say we did it all the time.

Senator MURKOWSKI. Well, when did you do it and when did you not do it?

Mr. DENTON. From 11, 12 years ago, sir, I cannot cite incidents. Frequently 100 percent financing did occur. The 20 percent loan that Union Bank made was as a result of a requirement that the Bank of Flippin had for equity. I as the handling loan officer was not aware that the Bank of Flippin was involved in that transaction at the time. I was told at the time that the balance of the purchase price would be carried by the seller. Our loan was made in June 1979, the \$20,000 loan. The loan participation closed in August and sold to Union Bank some 2 months later.

Senator MURKOWSKI. Well, don't you—

Mr. DENTON. It is entirely possible that the plan changed and the Bank of Flippin made the loan, as opposed to the seller.

Senator MURKOWSKI. Isn't it customary when you initiate a participation that you disclose fully to the purchasing bank the circumstances surrounding the credit, including the appraisal, financial statements, and any other information? I guess I would ask, Mr. Burge, did you know that a \$20,000 unsecured loan was made by Citizens Bank when you sold them the participation?

Mr. BURGE. May I correct your question for a second? The \$20,000 loan was made by Union National Bank and not the Citizens Bank.

Senator MURKOWSKI. That is correct. Did you know of that loan?

Mr. BURGE. No, sir, I did not.

Senator MURKOWSKI. When did you find out that was the equity contribution and it was by a loan by Citizens?

Mr. BURGE. I read it in the periodical.

Senator MURKOWSKI. You read it again in the paper.

Last question. The appraisal, which I believe you have a copy of at this time?

Mr. BURGE. Not yet.

Senator MURKOWSKI. Not yet?

Mr. BURGE. I can see it on the screen.

Senator MURKOWSKI. OK, well, is that your signature, sir? It appears to be?

Mr. BURGE. Yes, sir.

Senator MURKOWSKI. It is dated August 7, 1978, and it lists the value of the land at \$242,000 or \$1,100 an acre; is that right?

Mr. BURGE. Yes, sir, that is correct.

Senator MURKOWSKI. What is that land and what is the value of unimproved land, \$1,100 an acre? Is it relative to unimproved land or sales of similar property?

Mr. BURGE. That property, and Senator, we are talking about 18 years ago, in my mindset and how we did appraisals, if you will look at that, that is a one-page appraisal.

Senator MURKOWSKI. Yep.

Mr. BURGE. I cannot tell you how I came to the conclusion of those terms or that amount.

Senator MURKOWSKI. Did your bank have a policy of loaning a certain percent of the value on real estate loans?

Mr. BURGE. Our bank basically looked at acquisition only.

Senator MURKOWSKI. Acquisition.

Mr. BURGE. Acquisition cost.

Senator MURKOWSKI. So they were basically purchasing this for \$200,000. You appraised it at \$242,000, so you appraised it for more than acquisition cost?

Mr. BURGE. That is correct.

Senator MURKOWSKI. So you do not always look at acquisition cost. What percentage did you generally have in your bank relative to how much value you would loan? Obviously, you had a policy in your bank. You did not loan 100 percent. You loaned 60 percent, 80 percent. It depended on whether it was improved land or unimproved land, is that not correct?

Mr. BURGE. Just again, basically most of our real estate loans for single-family housing, for farms, for lots, we did 90 percent lending of that during that period of time.

Senator MURKOWSKI. This is unimproved property, so what was your policy?

Mr. BURGE. That was 90 percent.

Senator MURKOWSKI. So you would go 90 percent on either improved or unimproved land?

Mr. BURGE. Exactly.

Senator MURKOWSKI. Both the same.

Mr. BURGE. If my memory serves me correctly.

Senator MURKOWSKI. Boy, that is an extraordinary policy of leniency. You would not show more favoritism to improved property

and loan more than on unimproved property? That just does not make sense.

Mr. BURGE. We were in a period, we were a new bank, we were trying to grow our bank. We were trying to cultivate customers. Our policies may have been a little more lenient at that time, but that is what made us grow.

Senator MURKOWSKI. So this was not something that was unusual. This was your general policy. You would loan up to 90 percent whether it was improved or unimproved?

Mr. BURGE. We did it to every customer.

Senator MURKOWSKI. Well, I will not go into the consequences of that, but I would like to ask Mr. Denton, what was your lending policy on unimproved and improved property? You are a senior loan officer and you had this credit and this appraisal available. Did you have the same policy regarding what you loan on improved land, vis-à-vis, unimproved land?

Mr. DENTON. As a policy, 50 percent would have been the established policy, without considerations to the net worth and repayment ability of the borrower.

Senator MURKOWSKI. Fifty percent on unimproved property?

Mr. DENTON. Yes.

Senator MURKOWSKI. Then explain to me, one more time, why in this case you went far beyond that. Maybe you did not know where the \$20,000 came from. Well, you knew where the \$20,000 came from. You knew that the equity was borrowed, so you did not follow your standard lending practice of lending 50 percent of value. In this, it was 100 percent. It was the purchase price.

Mr. DENTON. Yes, sir. We did not apply our normal lending standards. This was a correspondent banking relationship. We had an agreement from the selling bank that our bank would be repaid first, so really we had a 50 percent loan on this transaction, actually less than 50 percent advanced against the collateral.

Senator MURKOWSKI. Well, if you look at the collateral, do you agree that it was worth \$242,000?

Mr. DENTON. \$230 per acre for river front property in that area was certainly conceivable at that time. There have been a number of projects that have been quite successful in selling off raw acreage to investors who would buy it for future retirement purposes.

The payments on an acquisition of land of this price was very modest and it was done frequently. McDougal had been very successful in prior years in doing this on other parcels. So it did not really shock me.

Senator MURKOWSKI. This was given a value of \$1,100 an acre.

Mr. DENTON. I believe it was \$1,100 acres valued at \$230 an acre. I could be in error. I have not seen this appraisal prior to it just being handed to me.

The CHAIRMAN. Mr. Patterson, before we go—

Mr. PATTERSON. I believe it is \$1,100.

The CHAIRMAN. Wasn't it 200 acres at \$1,100 an acre?

Mr. PATTERSON. It was 230 acres at \$1,100 an acre.

Mr. DENTON. I stand corrected. I had not seen the document.

The CHAIRMAN. So it was \$1,100.

Senator MURKOWSKI. It is on the screen in front of you, Mr. Denton. Do you see that screen? That is what I am looking at. I guess I am just still curious——

Mr. DENTON. The lights are so bright, I can't see that screen.

Senator MURKOWSKI. I'm sorry, I'd be happy to give you this one.

Mr. DENTON. I was given one. I passed it on.

Senator MURKOWSKI. That kind of contradicts your lending policy if you are saying \$200 to \$300 or thereabouts an acre and this is \$1,100 an acre.

Mr. DENTON. No, sir, it does not contradict my statement about our lending policy of 50 percent.

Senator MURKOWSKI. Take me through the 50 percent one more time because you had to share this collateral with the other bank?

Mr. DENTON. No, sir, we did not have to share it. Our loan was for \$91,000 it was purchased, and it was a collateral value of, according to the appraisal, of \$242,000, so that is something less than 50 percent.

Senator MURKOWSKI. Something less than 50 percent. But the other bank has \$91,000 and you have an additional \$20,000 that you are lending unsecured.

Mr. DENTON. Yes, sir. We did not have any right to the collateral on the \$20,000 unsecured. That was a policy loan based on other considerations. We were discussing, as I understood your question, about our bank's policy regarding the lending.

Senator MURKOWSKI. I am trying to tie in this collateral with a \$91,000 loan from your bank, another \$91,000 loan from the participating bank, the availability of having \$242,000 collateral, and your statement that you would loan on 50 percent, which is 120, but you have to share that with the other bank.

Mr. DENTON. No, sir. Our bank purchased that participation on the basis that we would be repaid first.

Senator MURKOWSKI. So you had first call on all the collateral and the other bank was sitting there with none; is that right?

Mr. DENTON. That was the arrangement. It is not particularly uncommon in the correspondent banking in the sale of loan participations.

Senator MURKOWSKI. Yet, your bank, by making the unsecured loan, caused the loan to conform to equity requirement and your bank loaned the equity, \$20,000, unsecured, as you stated, for other policy reasons.

Mr. DENTON. I'm sorry, I did not hear the first part of your question. I was answering your last one.

Senator MURKOWSKI. Well, let's try it again. Your bank initiated the sale and the development of the loan because to qualify, someone had to make the equity contribution. In other words, this would not have stood the scrutiny of your examiners. There had to be an equity contribution. The other bank did not know that you had made a \$20,000 unsecured loan so that the loan would qualify. Then you sold a participation to the other bank without disclosing that there had been——

Mr. DENTON. Sir, I am with the purchasing bank, Union National Bank.

Senator MURKOWSKI. You made the \$20,000 unsecured loan.

Mr. DENTON. Yes, sir.

Senator MURKOWSKI. The \$20,000 unsecured loan was the equity requirement. Both banks were under the assumption the \$20,000 made the whole package qualify. It was an effort to purchase roughly \$200,000 worth of land with an equity requirement of \$20,000. So one bank loaned \$20,000 unsecured, and then the two banks split a participation. The fact that your bank initiated that for policy reasons is perhaps your own business. But, it is extraordinary that you would have two participating banks selling and repurchasing, with a first in/first out, without full disclosure to both banks. There is certainly an obligation to since, you know, to put this package together, there had to be an unsecured loan made to the principals because they did not have the equity. That is what I find so extraordinary. I happen to know something about the banking business.

Mr. DENTON. It sounds as if you do, sir.

Senator MURKOWSKI. I do. I know what stands the scrutiny of Federal examiners, State examiners, board of directors, and what is regular and irregular. I am just going to put it in general terms. You know, the way this loan was structured was an extraordinary convenience to the borrowers. Would you acknowledge that?

Mr. DENTON. Yes, sir, it was a policy loan from the standpoint of Union National Bank.

Senator MURKOWSKI. The fact that there was not the disclosure to Madison, no excuse me, Union, and no disclosure to Citizens or back and forth in any event, you know who you are, is disturbing to this Committee. It clearly shows in the light of day, that there was an extraordinary accommodation made to qualify it by lending \$20,000 unsecured, to the McDougals and the Clintons. I assume your rate was 10 percent which was the maximum allowable at that time under the usury. You could not have a floating rate or an adjustable rate loan. Is that not correct?

Mr. DENTON. We could have had a floating rate or an adjustable rate, but it could not have exceeded—

Senator MURKOWSKI. My last question is, can you enlighten me as to why this loan was made. Why was this extraordinary accommodation made? Was it because of the borrowers?

Mr. DENTON. Yes, at least one of the borrowers.

Senator MURKOWSKI. Which one?

Mr. DENTON. Bill Clinton.

Senator MURKOWSKI. All right. Thank you.

The CHAIRMAN. Senator Sarbanes.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. If I understand your testimony, Mr. Denton, your bank was protected because you had a first out on the loan. Essentially, the securitization of the loan was more than adequate to cover the loan amount from your bank as participating bank?

Mr. DENTON. Sir, again, I was not involved in the direct negotiations of that participation transaction. Documents within Union Bank reflected that that loan participation was sold or purchased on the same basis as was standard policy, that the purchasing bank would be out first, and that statement was recorded in the loan application, as I recall. It was submitted to the Directors Loan Review Committee at Union Bank.

Mr. BEN-VENISTE. Your bank was how many miles away from Mr. Burge's bank?

Mr. DENTON. I am sorry, sir, I do not recall ever having been to Flippin, Arkansas. I may have passed through, however.

Mr. BEN-VENISTE. Over 100 miles away?

Mr. DENTON. Yes, sir, certainly over 100 miles, I believe.

Mr. BEN-VENISTE. The value of the real estate in that area would be more within the expertise of the Flippin Bank, would it be fair to say?

Mr. DENTON. That is certainly fair to say.

Mr. BEN-VENISTE. You certainly do not sit here thinking that you have a recollection of what waterfront or other undeveloped property in Northern Arkansas was valued at 18 years ago?

Mr. DENTON. No, sir.

Mr. BEN-VENISTE. As far as you were concerned, it was a prudent loan from your bank's point of view, and in view of the arrangements that you have testified about in terms of the securitization. Is that fair to say?

Mr. DENTON. No, sir, I do not recall saying that I thought it was a prudent loan. I did not make an issue of it. I accepted it and I based that acceptance on accommodation arrangements.

Mr. BEN-VENISTE. Your bank was well secured under the accommodation arrangements?

Mr. DENTON. I felt we were not unduly at risk.

Mr. BEN-VENISTE. Now let's talk about what you do not know, but are willing to offer opinions about. That is, in response to Senator Faircloth's questions regarding whether there were favors exchanged as the result of a fundraiser held at Madison Guaranty Savings & Loan back in 1985. Let me ask you whether you have any firsthand knowledge about the leasing procedures at the ADFA, the bidding process that resulted in the leasing of retail space in 1985 by an Arkansas State agency of Madison Guaranty?

Mr. DENTON. I have no knowledge.

Mr. BEN-VENISTE. You have no knowledge whatsoever with respect to the bidding process, the criteria that was employed, the rate that was asked, the space requirements of the agency? You know nothing about this, isn't that so?

Mr. DENTON. I had exposure in other incidents involving State leases but for the Arkansas Housing Authority I had none, sir.

Mr. BEN-VENISTE. You were asked about whether there was some kind of an arrangement whereby a lease, which happened to be entered into a year before the fundraiser, had something to do with favoritism, Mr. Denton. That was the question put to you. And I want to explore, other than your relationship with the Independent Counsel's Office, your relationship with the facts as you sit here and give your opinion.

My question is whether you have any knowledge whatsoever of what the requirements were for the lease, the bidding process, the amount of space involved, the length of the lease, the amount charged for the lease?

Mr. DENTON. I have no knowledge.

Mr. BEN-VENISTE. Mr. Patterson, let me ask you about some questions that have been raised with respect to loans made to developers in recent history in Arkansas, back in the late seventies.

Is it not the case that there were instances with which you are generally familiar where more than 100 percent of the purchase price of property was reflected in loans made to developers?

Mr. PATTERSON. Yes.

Mr. BEN-VENISTE. Can you explain why that was?

Mr. PATTERSON. Well, to explain each loan, you would have to look at each loan, but in general, there would be a lot of development costs, such as surveys, abstract work. A lot of times you would have to put in electricity. We have a misunderstanding on, you know, we have raw land, but if you have a lot in the middle of Dallas, Texas, and you make somebody a loan for a Holiday Inn on it, obviously you might lend them more than the lot's value. So I think you have asked me a very broad, open question, and I have answered it sort of. If you want to specific something, well, maybe you would come at me that way.

Mr. BEN-VENISTE. At the time, individuals such as Mr. Wade and Mr. McDougal had a track record in terms of development. You were familiar with the fact that these kind of developers in Northern Arkansas were able to borrow 100 percent and sometimes more of the purchase price of raw land that they were going to develop and sell out in parcels. That is all I am asking.

Mr. PATTERSON. Yes, sir.

Mr. BEN-VENISTE. So that mystery, at least in terms of Northern Arkansas in 1978, loan appraisal of purchase price to the amount of the loan was not that unusual, and maybe we have covered that area now.

Mr. Proctor, because these loans were rolled over on an annual basis, or sometimes even shorter than an annual basis, we have heard that the first loan was made for a 6-month duration, but in view of that, was it the case, in your experience, that borrowers frequently did not submit updated financial statements every time the loan was rolled over, although that might have been a technical requirement?

Mr. PROCTOR. That is correct.

Mr. BEN-VENISTE. Could you estimate the percentage of the loans back in the mid-1980's that First Ozark had in its portfolio that were undocumented to the extent of not having fully updated financials accompanying the loan portfolio?

Mr. PROCTOR. During that time, somewhere around 40 percent. Senator SARBANES. Forty percent, did you say?

Mr. PROCTOR. Yes, sir.

Mr. BEN-VENISTE. I take it, you would do your best to try to keep those portfolios current but given the fact that these were all short term rollovers, it was not unusual for there not to be up-to-the-minute updating on financials. Is that correct?

Mr. PROCTOR. That is correct. And 40 percent is in dollar amount of loans, not in numbers, for the record.

Mr. BEN-VENISTE. Now at your bank, what was the risk rate associated with what we have been calling the Whitewater Development loan?

Mr. PROCTOR. The time I worked on it, it was risk rated a three.

Mr. BEN-VENISTE. What period of time was that?

Mr. PROCTOR. From 1983 until the time it paid off.

Mr. BEN-VENISTE. Can you tell us what a three rating signified?

Mr. PROCTOR. The standard loan with normal risk.

Mr. BEN-VENISTE. This is three, six is the top?

Mr. PROCTOR. That is correct.

Mr. BEN-VENISTE. And what percentage—

Senator SARBANES. Is six the worst?

Mr. PROCTOR. Six would be the worst.

Senator SARBANES. So six would be the worst, and one would be the best?

Mr. PROCTOR. Yes, sir.

Senator SARBANES. OK.

Mr. BEN-VENISTE. At the relevant times, could you say, associated with your familiarity with this loan, what percentage of the bank's loan portfolio would have been in the three category, the same as the Whitewater loan?

Mr. PROCTOR. Now or then, either one, it averages around 80 percent, 85 percent.

Mr. BEN-VENISTE. So the Whitewater loan was carried, in terms of its risk, along with the vast majority of the loans covered in the bank's portfolio?

Mr. PROCTOR. Yes, sir.

Senator SARBANES. These would not be loans in which default was contemplated. These would be normal loans at normal risk. Is that correct?

Mr. PROCTOR. Correct.

Mr. BEN-VENISTE. Now the officers of the loan committee voted unanimously to renew the loan in 1987. Is that correct?

Mr. PROCTOR. Yes, sir.

Mr. BEN-VENISTE. And at that time, is it fair to say that neither Mr. or Mrs. Clinton was involved in the process as far as dealing with your bank?

Mr. PROCTOR. At that time, yes.

Mr. BEN-VENISTE. When did you first come in contact directly with Mr. or Mrs. Clinton?

Mr. PROCTOR. Well, I have never spoken to Mr. Clinton any time during the loan process. I have met Mr. Clinton a couple times, but never discussed the loan. The person that I spoke to, Mrs. Clinton, I spoke to her in early 1990 approximately.

Mr. BEN-VENISTE. In what connection was that?

Mr. PROCTOR. Financial statements or renewal of the loan. We had a conversation about that on the telephone about two different occasions.

Mr. BEN-VENISTE. Let me put in front of you the personal financial statement of Mr. and Mrs. Clinton that was submitted in 1987, I believe. It is in your package. Do you have it in front of you?

Mr. PROCTOR. Yes, sir. March 8, 1987.

Mr. BEN-VENISTE. Right. There has been quite a lot of discussion, some of it highly inaccurate, in the popular press and other publications about this particular statement, so I would like to take you through it.

Mr. PROCTOR. OK.

Mr. BEN-VENISTE. This statement is dated March 1987; correct?

Mr. PROCTOR. Correct.

Mr. BEN-VENISTE. It was received by your bank; correct?

Mr. PROCTOR. Yes, on March 26th.

Mr. BEN-VENISTE. It purports to be a statement of condition as of March 8, 1987.

Mr. PROCTOR. Yes, sir.

Mr. BEN-VENISTE. Now the total amount of assets and notes, real estate assets and notes receivable was \$100,000. Is that correct? I am looking under the assets column. Within that column, you see in accounts or notes receivable of \$50,000?

Mr. PROCTOR. Yes.

Mr. BEN-VENISTE. Real estate partial interest \$50,000?

Mr. PROCTOR. Oh, OK. I see where you are looking, yes.

Mr. BEN-VENISTE. Now would you take that to mean combined interest, the interest in the Whitewater project, if you had made such an assessment at the time?

Mr. PROCTOR. I reviewed this statement at that time, but did not make that assessment.

Mr. BEN-VENISTE. OK. As we look at it now in terms of the Whitewater investment, as an asset on a financial statement. If we look at that combined total, as perhaps the total amount, that is either \$50,000 or \$50,000 plus some figure, because real estate is listed at \$50, and accounts and notes receivable are listed at \$50, which could mean amounts sold off or property sold off of that investment and the like.

Then we look at the other side, the second page. Do you remember, and this is not meant to trip you up, and it is not a trivia question, but was this a two-sided form or two separate pages, if you recall?

Mr. PROCTOR. I remember it being a front and back, 1-page form.

Mr. BEN-VENISTE. There is a pretty good indication by the fact that at the top of the second page, it says, "both sides of this statement must be completed" indicating it is a two-sided document?

Mr. PROCTOR. Yes, sir.

Mr. BEN-VENISTE. Now if we look at the debt due to banks, savings and loans, finance companies, or others on that second page, we see that an amount of \$70,000 is indicated.

Mr. PROCTOR. Yes, sir, I see it.

Mr. BEN-VENISTE. If you applied that amount to the \$100,000 that I predicate for a valuation of Whitewater, both in terms of the real estate and notes receivable, that would leave a net valuation in what amount?

Mr. PROCTOR. Thirty thousand dollars.

Mr. BEN-VENISTE. That would be the \$30,000 for the Whitewater investment. How much was outstanding on your loan to the Clintons and McDougals at that time?

Mr. PROCTOR. In March 1987, I do not have that. In January 1987, it was \$53,000 it looks like, no, \$52,135.80.

Mr. CHERTOFF. In a sense, this \$70,000, if it reflects your loan, it says First National Bank of Ozark; right?

Mr. PROCTOR. Correct.

Mr. BEN-VENISTE. You're pretty sure of what the amount was. This looks like it's a very conservative list of the amounts outstanding in terms of debits.

Mr. PROCTOR. Yes.

Mr. BEN-VENISTE. A financial statement. It would appear to you, would it not, that the valuation, both in terms of the real estate and subtracting the loans outstanding, was pretty conservative?

Mr. PROCTOR. I would agree.

Mr. BEN-VENISTE. It's certainly not an inaccurate representation of the situation as to the interest in the Whitewater investment.

Mr. PROCTOR. Right.

Mr. BEN-VENISTE. I see my red light is on, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Denton, I just want to summarize with you or make sure I understand your point of view on this, and then move on in time. You indicated to Senator Murkowski that this initial loan, this \$20,000 loan which, unbeknownst to the people at Citizens Bank, was actually the source of the downpayment, was given to the McDougals and the Clintons because the owner had passed down word through a lobbyist, a bank lobbyist, that he wanted to have Bill Clinton get the loan. That's essentially correct; right?

Mr. DENTON. Yes.

Mr. CHERTOFF. You were also asked, was this loan later treated like other loans. I wasn't sure I got your answer. Was this loan later treated like other loans?

Mr. DENTON. I believe Mr. Ben-Veniste asked me if the loan was performing and if it was satisfactory, and I indicated that it was not satisfactory.

Mr. CHERTOFF. What was unsatisfactory about it?

Mr. DENTON. The loan matured without payment.

Mr. CHERTOFF. Was the loan called at that point?

Mr. DENTON. No, it was not.

Mr. CHERTOFF. Why not?

Mr. DENTON. For the same reasons it was granted.

Mr. CHERTOFF. Which is what?

Mr. DENTON. A policy loan.

Mr. CHERTOFF. When you say a policy loan, you mean?

Mr. DENTON. It was an accommodation to one of the borrowers.

Mr. CHERTOFF. You mean a favor?

Mr. DENTON. Right. I'm not accustomed to using that word in the extension of credit, but one could.

Mr. CHERTOFF. Then the next time the extension came due, there was another accommodation made to the borrower?

Mr. DENTON. As I recall, after the first maturity, there were serious discussions and urging by me to effect a reduction.

Mr. CHERTOFF. What happened?

Mr. DENTON. There were none for some period of time.

Mr. CHERTOFF. Then eventually they wound up taking money from some other source and paying out the loan; right?

Mr. DENTON. Yes, the loan was liquidated.

Mr. CHERTOFF. That happens to coincide with the point at which Mr. McDougal was coming back to your bank to ask for a loan to buy the Bank of Kingston?

Mr. DENTON. That's what I recall, yes, sir.

Mr. CHERTOFF. So it's fair to say in kind of layman's terms that the bank was kind of strung along on this loan until Mr. McDougal

finally needed to come in for more money for the next venture, and then he found some way to pay it off?

Mr. DENTON. I did not use the word strung along.

Mr. CHERTOFF. It's my word, but is the concept right?

Mr. DENTON. Yes.

Mr. CHERTOFF. In response to Mr. Ben-Veniste's question about the housing lease, you said that you had some exposure to other leases. What would those leases be?

Mr. DENTON. While at Union Bank, I had occasions to review leases from State agencies or Federal agencies that were located in the Union Bank Building which was owned by Union Bank. In addition, I frequently extended credit to other entities that owned buildings that negotiated State leases with various departments. I had a personal friendship at one time with an entity that was head of the buildings, I believe it was referred to as the Director of State Buildings for the State. So I had some exposure to leases. I knew it was quite lucrative to various landlords, particularly in the office building arena, to negotiate leases with agencies, State agencies, as well as Federal agencies.

Mr. CHERTOFF. That's because when you get a State agency as a tenant, you know the tenant is there, can pay the rent, and isn't going to go bankrupt?

Mr. DENTON. It's a desirable tenant, yes, sir.

Mr. CHERTOFF. You also indicated earlier, I think in response to Senator Faircloth's question, that there were certain people that you regarded as Mr. Clinton's emissaries. I think that was your term. Who did you mean by that?

Mr. DENTON. I don't have any particular individuals identified. Most of the staff members. I know that Jim McDougal certainly served in that capacity at one time. Steve Smith served in that capacity at one time. Both of those parties I had rather extensive dealings with.

We extended the loan to another staff member. I don't recall his name. It was for the purchase of a condominium in Little Rock, when he first moved to Arkansas to serve on Clinton's first staff. So there were a number of those individuals that would run errands for, and that certainly was not unique to the Clinton administration, it was common practice in my experience.

Mr. CHERTOFF. Now, Mr. Ritter, I want to turn to you and pick up on this notion of this interest funding loan, because this is another situation where someone raised the question earlier about whether these loans were paid off. That of course begs the question, because the real question is what were they paid off with. Was this a situation of essentially borrowing from Peter to pay Paul, a kind of endless chain which is like somebody's called it a daisy chain or something like that.

So let me ask you, Mr. Ritter, to focus your attention on one of the documents in your package. It is a loan document on Citizens Bank and Trust Company, Loan Number 10295, date November 1, 1982, for \$20,000. If you look at the screen, you may see what the document is.

Mr. RITTER. I have it.

Mr. CHERTOFF. It says the purpose of the loan is advance of funds for the Whitewater Development Company. Is this a loan

that you later learned or realized was essentially being used to pay the interest on that original note?

Mr. RITTER. I honestly am not sure at this point.

Mr. CHERTOFF. Well, let me refresh your memory. Let me go to your deposition at page 86. Can we get a copy of the deposition to the witness. I think you may have it there. At page 86, at the very top—do you have it?

Mr. RITTER. No. Just a second. I do.

Mr. CHERTOFF. At the very top, it says:

Question: What do you recall of the interest funding loan, the \$20,000 loan that was made on November 1, 1982?

Answer: Well, I'm not sure how much I recall. I recall some things in general. I'm not sure that at first it was called an interest funding loan. I thought it was some additional funds they needed for something initially and then later on I think it turned into basically to pay the interest in our original note.

That's accurate?

Mr. RITTER. Yes, it is. Prior to this time, there had been a request by Jim McDougal of myself, and I can't tell you how much before that, and it was basically he was requesting some funds for something different. I turned it down very quickly, simply saying, Jim you're just really not one of our customers and you have a bank of your own and you have your own sources through your correspondent banks, and let it go at that. And it was basically for the same amount, the same, around \$20,000.

Mr. CHERTOFF. Then he came back and got this loan as an advance for Whitewater Development. And as you say in your deposition, essentially that was used to pay the interest on the note?

Mr. RITTER. That's correct.

Mr. CHERTOFF. So you understood, at this time, that there was a cash flow problem here, and that Whitewater was having trouble making its payments on the note. In fact, you later learned they had actually borrowed money in order to pay off?

Mr. RITTER. That's correct.

Mr. CHERTOFF. Wasn't it Chris Wade, the real estate broker, who also came in? He kind of pushed you a little bit to make this loan?

Mr. RITTER. That's correct.

Mr. CHERTOFF. Now, Mr. Ritter, would you agree that during the period you were at Citizens Bank, you had a recurrent problem getting financial statements from the Clintons?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. Was that a matter of concern for you?

Mr. RITTER. It was always a matter of concern to finish the documentation on notes, and basically we seemed to have an ongoing problem with that.

Mr. CHERTOFF. Did you try, did you urge them, either directly or indirectly, to provide you with that information?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. And were they responsive?

Mr. RITTER. It always took awhile. You would call and everybody would say, yes, we'll get that to you. Eventually some of the things did come, and we had the things signed and they did come in.

Mr. CHERTOFF. So there were delays and hassles getting those statements; right?

Mr. RITTER. Yes, sir.

Mr. CHERTOFF. Citizens Bank eventually became First Ozark Bank and then part of Twin Cities, Mr. Proctor?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. Mr. Dewey, you worked at what originated as Mr. Burge's bank and Mr. Ritter's bank, and then you became involved with Mr. Dewey and Mr. Proctor; right?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. So we have the flow. Mr. Dewey, would you agree with me that this loan, this Whitewater loan, was a nuisance and was continually past due at the bank?

Mr. DEWEY. As I remember it, sir, yes.

Mr. CHERTOFF. It was something that was discussed at the bank?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. Mr. Proctor, you would agree with that; right?

Mr. PROCTOR. No, I would not, because I personally handled the loan and Mr. Dewey did not. So he saw it from the outside, yes, the outside looking in, and I guess he saw what I was doing, and he thought maybe that was a burden to me. But I did not see it that way. I thought it was very typical of the loans that we had at that time, during that period in the economy.

Mr. CHERTOFF. Let me go step by step. Mr. Dewey, there were difficulties getting the financial statements necessary to document the file?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. Do you agree with that, Mr. Proctor?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. As a matter of fact, it was something that was discussed because there was particular sensitivity that this was a loan in which the Governor was a participant; right, Mr. Dewey?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. Is that right, Mr. Proctor?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. As a matter of fact, this was discussed at a meeting of the Board of Directors of the bank at one point; isn't that correct, Mr. Proctor?

Mr. PROCTOR. I do not recall any Board meetings where we discussed the loan or documentation per se. We discussed documentation on all of our loans in meetings, but this one was not singled out as a loan.

Mr. CHERTOFF. Well, was there a discussion—maybe not with the Board of Directors, but was there a discussion with Ed Penick and Susan Sisk? Who are Ed Penick and Susan Sisk?

Mr. PROCTOR. Ed Penick was President of Twin City Bank at that time, and also Chairman of the Board at First Ozark National Bank. Susan Sisk was a lender at Twin City Bank who assisted us at our bank as well. The discussion with Mr. Penick involved his help in getting a financial statement from both the Clintons and McDougals, but primarily the Clintons.

Mr. CHERTOFF. Mr. Proctor, would you agree that there was discussion with Mr. Penick about the fact that there was a problem with documentation and perhaps the need to have someone contact Hillary Clinton directly about it?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. That's your recollection, as well, Mr. Dewey?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. As a matter of fact, Mr. Proctor, that in 1987, there was a concern about an unwillingness to continue to extend this note if you didn't get new financials, if all proceeds were not applied to the note, and that all the contracts for sale were to be maintained at the bank?

Mr. PROCTOR. There were concerns with all of our loans lacking financial statements, yes, sir.

The CHAIRMAN. Pull that microphone up in front of you.

Mr. PROCTOR. OK. There were concerns about any loan that did not have a financial statement at that time because we were trying to improve the condition of the——

The CHAIRMAN. He didn't ask you that. He asked you about this specific loan. Go ahead and ask him again.

Mr. CHERTOFF. Was there a concern with respect to this loan about whether to renew the loan without having new financial statements, a requirement that all contracts be maintained at the bank, and that all proceeds be applied directly to the note?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. All proceeds of sale?

Mr. PROCTOR. That is correct.

Mr. CHERTOFF. And those were made conditions of renewing the loan in 1987; right?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. Mr. Dewey, do you recall that as well?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. There came a point, Mr. Proctor, where there was particular concern because of the examiners possibly looking at the files of the loan at the bank and seeing that there was inadequate documentation, including inadequate financial statements. Is that correct?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. When was that?

Mr. PROCTOR. Approximately 1988, between the period of 1988 to 1990.

Mr. CHERTOFF. Wasn't it, 1988?

Mr. PROCTOR. If my memory serves me correctly.

Mr. CHERTOFF. And that's your recollection too, Mr. Dewey?

Mr. DEWEY. I don't recall.

Mr. CHERTOFF. As a consequence of that, there was specific discussion with Mr. Penick about the fact that this was the Governor's loan and you had to get some financial statements in; right?

Mr. PROCTOR. No, sir.

Mr. CHERTOFF. Who is Margaret Davenport?

Mr. PROCTOR. Margaret was at that time Executive Vice President at Twin City Bank.

Mr. CHERTOFF. She was also a State appointee to the Arkansas Development Finance Authority?

Mr. PROCTOR. I've heard that, yes.

Mr. CHERTOFF. A friend of Mrs. Clinton?

Mr. PROCTOR. I've heard that also.

Mr. CHERTOFF. Was there specific discussion in which Mr. Penick said, well, Margaret and Hillary are personal acquaintances, let me ask and see if she can help you get the financial statement?

Mr. PROCTOR. Yes, Mr. Penick did offer that assistance, yes.

Mr. CHERTOFF. Mr. Dewey, do you remember that as well?

Mr. DEWEY. Yes, sir, I recall that.

Mr. CHERTOFF. Did Ms. Davenport, in fact, talk to Mrs. Clinton about it?

Mr. PROCTOR. I do not know that.

Mr. CHERTOFF. You didn't follow up?

Mr. PROCTOR. We received the financial statement, and that's all I needed so no, I did not.

Mr. CHERTOFF. You got a financial statement in 1988?

Mr. PROCTOR. Yes, sir. Well, at the time that Ms. Davenport talked with Mrs. Clinton, if she did, somehow the word got to Mrs. Clinton and we received a financial statement.

The CHAIRMAN. Now look, don't dance around. This is the second time, you know. I'll make the observation. When we ask you a specific thing about whether there was a specific conversation as it related to the documentation, you said, well there was a conversation in general. Then we had to get back. Answer it specifically. There are no trick questions here.

Obviously, we have the depositions and testimony of other people in connection with this, so be candid and forthcoming with us, and we can get done. Go ahead, Mr. Chertoff.

Thank you.

Mr. CHERTOFF. The financial statement you testified about was an early 1987 statement. We are now in 1988, Mr. Proctor. I'm asking you whether in 1988—

The CHAIRMAN. Let's be fair to the witness and give him whatever it is that we are going to ask him a question about. So let's refer him to it so that he has a point to look at.

Mr. CHERTOFF. You have the financial statement that Mr. Ben-Veniste just asked you about in his time?

The CHAIRMAN. Can we identify that?

Mr. CHERTOFF. It is a March 1987 financial statement signed by the Clintons. You just looked at it a moment ago.

Mr. PROCTOR. Yes, I had that one, yes.

The CHAIRMAN. All right. Let's see if you have it in front of you. Do you have it in front of you?

Mr. CHERTOFF. What's the date on that?

Mr. PROCTOR. March 8, 1987.

Mr. CHERTOFF. We are now in 1988, Mr. Proctor. You testified that this discussion occurred with Ms. Davenport. Did Ms. Davenport report back on her conversation with Mrs. Clinton?

Mr. PROCTOR. No, sir.

Mr. CHERTOFF. Did you guys just drop the matter of the financial statement?

Mr. PROCTOR. No, we received a financial statement. It is not in the package here, but as soon as I talked with Ms. Davenport, we did receive, or when Mr. Penick talked with Margaret Davenport, we received a financial statement shortly thereafter, within a couple of months.

Mr. CHERTOFF. Didn't you, in fact, waive the financial statements for the McDougals first, and then for the Clintons in late 1987 and mid-1988?

Mr. PROCTOR. The McDougals, yes.

Mr. CHERTOFF. What about the Clintons?

Mr. PROCTOR. That was later on. The dates I don't have memory of but it's in the file.

Mr. CHERTOFF. In your package, I think, there is a request for a documentation waiver for Whitewater Development, a personal financial statements of guarantors and a financial statement on Whitewater, dated July 15, 1988.

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. Are your initials on that?

Mr. PROCTOR. Yes, those are my initials, yes, sir.

Mr. CHERTOFF. You requested it?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. And was it granted?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. Your testimony is you got a financial statement after the waiver?

Mr. PROCTOR. Yes, I did.

Mr. CHERTOFF. When did you get it?

Mr. PROCTOR. It was approximately after this date for the waiver. It was sometime later in 1988 if my memory is correct.

Mr. CHERTOFF. You said you had a conversation with Mrs. Clinton, in addition to the conversation that Margaret Davenport had?

Mr. PROCTOR. No, I did not say that. I did not have a conversation with Mrs. Clinton that I can recall around that time period.

Mr. CHERTOFF. At any time, did you have a conversation with Mrs. Clinton?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. When was that?

Mr. PROCTOR. The early part of 1990, latter part of 1989.

The CHAIRMAN. The red light is on.

Senator Sarbanes.

Senator SARBANES. How much more time does he need?

The CHAIRMAN. No, no. Senator, take whatever time you need. Senator Sarbanes, it's now your time.

Senator SARBANES. Fair enough. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Is there any suggestion that Mr. Clinton or Mrs. Clinton ever knew that the Union Bank loan was overdue or might not be extended, or had any problems? Is there anyone who could respond to that question?

Mr. DENTON. The question was regarding the Union Bank loan?

Mr. BEN-VENISTE. Yes.

Mr. DENTON. I would be the appropriate one. I do not recall having any conversations regarding that delinquent status.

Mr. BEN-VENISTE. No suggestion, no hint, nothing you read in the papers, nothing you got from any friends of yours, emissaries or otherwise, suggested that the Clintons knew that the loan had matured without payment; correct?

Mr. DENTON. I can't respond if the Clinton's received a maturity notice or not. It was standard procedure for our bank to mail coming maturities and then later delinquent notices.

Mr. BEN-VENISTE. You have no personal knowledge as to whether the Clintons knew about or received any such information; isn't that so?

Mr. DENTON. I am inclined to speculate, if I might, that it's likely Mr. McDougal's address was used for those notices, and I have no knowledge that the Clintons received direct notice.

Mr. BEN-VENISTE. Mr. Denton, can you recall about how long a period of time that the loans were renewed and matured without payment. Let's go to the first time a loan matured without payment.

Mr. DENTON. June 1979.

Mr. BEN-VENISTE. How long did it go until it was renewed?

Mr. DENTON. Without documents, sir, I certainly don't know.

Mr. BEN-VENISTE. Was it a year?

Mr. DENTON. No, sir.

Mr. BEN-VENISTE. Was it 6 months?

Mr. DENTON. Sir, I don't know.

Mr. BEN-VENISTE. Could it have been a matter of weeks?

Mr. DENTON. It certainly could have been.

Mr. BEN-VENISTE. When was the second time that the loan matured without payment?

Mr. DENTON. The next maturity, I don't recall when that was. I do remember vaguely that I began to be concerned and shortened the maturities after that first 1-year note.

Mr. BEN-VENISTE. So what you are saying is you can't tell us whether a matter of weeks or days the loan matured without payment, but then it was paid; correct?

Mr. DENTON. It ultimately was paid in June 1980, yes, sir.

Mr. BEN-VENISTE. Right. So all of this loan matured without payment and so forth. You have no information whatsoever that anyone other than Mr. McDougal, who was supposed to take care of this, was notified about it, or took care of it. What we do know is that the loans were extended and they were paid off?

Mr. DENTON. No, sir, I wouldn't agree with that.

Mr. BEN-VENISTE. They weren't extended?

Mr. DENTON. Yes, sir, they were extended.

Mr. BEN-VENISTE. They weren't paid off?

Mr. DENTON. Both of those parties made a promise to pay that obligation when it matured, and I held both responsible for meeting that obligation.

Mr. BEN-VENISTE. I understand that. But at the same time, without a recollection of how long they went without being paid off, they were paid off, and whatever interest was owed was paid, as far as you know?

Mr. DENTON. That's accurate.

Mr. BEN-VENISTE. Now let's talk about this question of the financial statements, Mr. Ritter. Financial statements were required to be in the loan portfolio document when loans were renewed. That was a requirement; correct?

Mr. RITTER. Yes, sir.

Mr. BEN-VENISTE. To some extent, those financial statements were not provided on a timely basis in terms of when the renewals were made?

Mr. RITTER. That's correct.

Mr. BEN-VENISTE. In your view, was that a function of whether or not the renewal would be made. The financial statement was

there at the moment that the decision was made on whether to renew the loan?

Mr. RITTER. Not really. We already had the loan on the books. I think it was a matter of documentation at that point.

Mr. BEN-VENISTE. Basically it was a formality, is that so?

Mr. RITTER. We were more concerned about eventually getting them for the regulators.

Mr. BEN-VENISTE. When you say the regulators, or the examiners, or whoever was sent to look at the loan portfolios, one of the things they looked at was whether there was a current financial statement; right?

Mr. RITTER. That's right.

Mr. BEN-VENISTE. If I understand your testimony, given the fact that in Arkansas these loans were constantly renewed and rolled over because they were of short duration, there was frequently a lag between the time that these financial statements were submitted, even after the loans had been rolled over?

Mr. RITTER. That's correct. But there's a little bit more to this. And that is we wanted the financial statements, it was something we need, but they weren't always there at the right time.

Mr. BEN-VENISTE. As you say, this was a formality and if there was a dramatic change in the financial condition, you would want to know about that. That might well affect your making a further renewal of a loan at a later time, et cetera. But if I understand what you're saying here, all this to-do about whether the financial statements were submitted exactly at the moment that the loan application was considered for renewal was not an important factor in your deciding to renew the loan?

Mr. RITTER. As far as the renewal of the loan, the answer is no. It was an important factor. It was one of those things we just didn't happen to have at that point. There were always promises that we were going to get them. But if there'd been a drastic change, would we have called the loan? Probably so.

Mr. BEN-VENISTE. OK, you had that option. But in terms of the decision that you made to renew the loan back 12 years ago or whenever the heck it was, the fact of having an updated financial statement in hand was not critical to you?

Mr. RITTER. Not critical, no.

Mr. BEN-VENISTE. You made the loan renewal without it.

Mr. RITTER. That's correct.

Mr. BEN-VENISTE. As you have testified, the decision was made to complete the loan file later, but you would renew the loan?

Mr. RITTER. That's also correct.

Mr. BEN-VENISTE. Mr. Cole.

Mr. COLE. Thank you, Mr. Ben-Veniste.

I would like to turn to Mr. Burge and Mr. Patterson, if I could. Since this is the first hearing that we've had at this Committee on the Whitewater investment after, by my count, over 50 days of hearings, I would like to get a little more background about the Whitewater investment itself. A great deal has been written about it, but here in our record, this is the first hearing we have had on the subject.

I'd like to start with a little geography, which I think is relevant, and I'll get to why in a moment. The bank that we've been discuss-

ing here was in Flippin, Arkansas in Marion County in North Central Arkansas. Is that correct, Mr. Burge?

Mr. BURGE. That's correct.

Mr. COLE. Flippin, Arkansas is about 130 or 135 miles north of Little Rock; is that correct?

Mr. BURGE. That's correct.

Mr. COLE. Different part of the State?

Mr. BURGE. Totally.

Mr. COLE. Mr. McDougal and Mr. Clinton, at that time, lived in the Little Rock area; is that correct?

Mr. BURGE. To my knowledge.

Mr. COLE. The property that you made the loan on, the Whitewater property itself, was near Flippin?

Mr. BURGE. That's correct.

Mr. COLE. Mr. Patterson, you were one of the group of sellers of the Whitewater property; is that correct?

Mr. PATTERSON. This is true.

Mr. COLE. If I recall correctly, that was a corporation called 101 River Development Corporation?

Mr. PATTERSON. That is correct. And I need to, for the record, point out that this morning, somebody said that Mr. Wade was in that group. He was not.

Mr. COLE. I want to get to Mr. Wade's role in a moment. But what would you like to say to clarify the record?

Mr. PATTERSON. That he was not in the group.

Mr. COLE. Mr. Wade was not one of the sellers of the property.

Before we get to the actual sales transaction, though, if you two gentlemen, or Mr. Proctor and Mr. Dewey, have knowledge about this, feel free to contribute. At the time we're talking about, which is the late 1970's, and going back to the mid-1970's, had people been making money buying pieces of land in this area along the White River, cutting it up into lots, and then reselling it?

Mr. BURGE. Yes, sir, they had.

Mr. COLE. In fact, there had been something of a mini-land boom in that part of the State; is that correct?

Mr. BURGE. Yes, sir.

Mr. COLE. A number of people, and Mr. Wade among them, had bought large tracts of land, cut them up into lots and then sold them at substantial profit and made money?

Mr. BURGE. Yes, sir, that's correct.

Mr. COLE. Your financial institution made other loans for similar kinds of projects with the expectation that the developers would make money and be able to repay the loans?

Mr. BURGE. Yes, sir.

Mr. COLE. Mr. Patterson, did you deal with Mr. McDougal as far as the sale of this particular parcel, the Whitewater parcel was concerned? Or did you deal only with Mr. Wade?

Mr. PATTERSON. I don't for sure a hundred percent remember.

Mr. COLE. Mr. Wade was the agent for the seller on this transaction. He was the real estate agent who handled the transaction?

Mr. PATTERSON. Yes.

Mr. COLE. In that capacity, he would have been representing you and the other sellers, the 101 River Development Corporation?

Mr. PATTERSON. It was co-broker to brokerage deal. I believe he would have been, under today's law, representing the buyer. He would not have been in any way really representing the seller.

Mr. COLE. He earned a commission on the sale, did he not?

Mr. PATTERSON. I don't know.

Mr. COLE. Let me ask you this. The 101 River Development Corporation owned a large tract of land along the White River that they had purchased shortly before the Whitewater parcel was sold. Is that correct?

Mr. PATTERSON. Yes.

Mr. COLE. The Whitewater parcel was one of the tracts that came out of the larger property your corporation had purchased?

Mr. PATTERSON. Yes.

Mr. COLE. Did you sell tracts other than the Whitewater parcel?

Mr. PATTERSON. Yes.

Mr. COLE. How did the price per acre paid for the Whitewater property compare to the other parcels that your corporation sold?

Mr. PATTERSON. To my memory, it was one of the higher ones.

Mr. COLE. Wasn't it, in fact, the highest price per acre?

Mr. PATTERSON. I don't know for sure, but to my memory, it was one of the very best pieces of property. I would assume it would be one of the very highest prices.

Mr. COLE. Do you have any knowledge as to whether Mr. Clinton or Mrs. Clinton ever personally inspected that property before they purchased it with Mr. McDougal and his wife?

Mr. PATTERSON. To my knowledge, they did not.

Mr. COLE. Did it appear to you that Mr. McDougal was taking the lead role for the buyers in the transaction and was working with Mr. Wade?

Mr. PATTERSON. Yes.

Mr. COLE. And your group, I take it, was happy to sell the property for the price that they got for it?

Mr. PATTERSON. It was listed for that for all real estate companies in that area, region.

Mr. COLE. Do you recall if Mr. McDougal had other real estate developments in that area, or that part of the State, at the time?

Mr. PATTERSON. I am of the opinion he did. I'm not of the opinion that I knew that at the time, but things have blurred over the last 18 years. I knew he was a developer of real estate.

Mr. COLE. Did other buyers of the other parcels that 101 River Development Corporation sold pay the list price as well, or did they negotiate for a lower price?

Mr. PATTERSON. I don't believe that there was any other prices negotiated.

Mr. COLE. So all the parcels sold at the list price to the best of your recollection?

Mr. PATTERSON. I think that's true.

Mr. COLE. Let me ask both of you gentlemen this question. Either or both of you can respond. Was it your understanding, at the time this transaction took place, that the McDougals and Clintons were entering into this investment expecting to make money on the property?

Mr. BURGE. Yes.

Mr. PATTERSON. Yes. And I want to clarify the last question you had. I want to be very careful to make sure that I say exactly what I remember.

Mr. COLE. Certainly.

Mr. PATTERSON. It is very hard to remember those many years ago, and I wouldn't say that there was not some parcel out of all the many parcels that might have had a percent taken off. I don't know of it, but I wasn't in charge of that.

Senator SARBANES. You're talking about, what, 18 years ago?

Mr. PATTERSON. Yes, sir. In other words, there were many pieces of property sold. To my knowledge, it sold extremely well and also for what it was listed with all the various realtors.

Mr. COLE. That's helpful. My time is about to expire, but the point that I was trying to get to was that first, based on prior experience in that particular area, that part of the State, developments of this kind had been successful, the developers had made money on them. Am I correct about that?

Mr. BURGE. Yes, at least the ones that did business with us.

Mr. COLE. So this particular investment by the Clintons and the McDougals was not out of the ordinary. The price they paid was the list price that you had for any buyer that might have come along to buy it, and that it was your impression, Mr. Burge the banker, and Mr. Patterson both the seller and as the banker, that this was a moneymaking venture that the Clintons and the McDougals were entering into, or they believed so at the time?

Mr. PATTERSON. Yes, sir.

Mr. COLE. No one knew at that time, that in the following years interest rates would go up dramatically, land prices in that area would drop dramatically, and developments like that would not enjoy the success that they had in prior years; am I correct?

Mr. BURGE. That's correct.

Mr. COLE. Thank you, Mr. Burge. My time has expired.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Proctor, tell us about this 1990 conversation with Mrs. Clinton.

Mr. PROCTOR. Can I clear up something? During my review of our discussion earlier, I was somewhat confused on the dates on those financial statements. The conversation that we had with Mr. Penick and Ms. Davenport, I believe, was 1987 or early 1988, before we received the financial statement. The financial statement that we received, that was dated March—

Mr. CHERTOFF. March 1987.

Mr. PROCTOR. Our meeting was prior to that date, whatever that date was.

Mr. CHERTOFF. So after Ms. Davenport intervened, you got the financial statement in March; right?

Mr. PROCTOR. That's correct.

Mr. CHERTOFF. And the next time, as we discussed, in July 1988, the next year, when there was a request for a financial statement, you obtained a waiver of that requirement; right?

Mr. PROCTOR. Yes. Let me find that document and go along and try to get back in the position where I can keep up here.

Mr. CHERTOFF. July 15, 1988, there's a waiver of documentation; is that right?

Mr. PROCTOR. Yes, I have it in front of me.

Mr. CHERTOFF. After that, you didn't get a financial statement; is that right?

Mr. PROCTOR. Excuse me a second. There was a documentation waiver of December 7, 1987. Is that the one you're referring to?

Mr. CHERTOFF. No. We're talking about July 15, 1988.

Mr. PROCTOR. Let me move on to that one. Now, I have it, sir.

Mr. CHERTOFF. These are your initials; right?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. You requested it?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. And you got it?

Mr. PROCTOR. That's correct.

Mr. CHERTOFF. You waived the financial statement, in 1988. This time the financial statement was waived; right?

Mr. PROCTOR. Correct.

Mr. CHERTOFF. So you never got a financial statement after that?

Mr. PROCTOR. That is correct, yes.

Mr. CHERTOFF. Now tell us about this 1990 conversation with Mrs. Clinton.

Mr. PROCTOR. I can't recall the specifics of that conversation at all. I know it was in regard to either renewal or maybe obtaining financial statements for the file, but I really don't recall.

Mr. CHERTOFF. Did she call you or did you call her?

Mr. PROCTOR. My understanding was that she had talked with our bank president at the time, and was returning a call possibly to him, and I talked with her. But that's very sketchy because whatever it was, I can't recall it being a big enough issue to really remember the conversation.

Mr. CHERTOFF. Was that the only time you spoke to her?

Mr. PROCTOR. Maybe one other time.

Mr. CHERTOFF. When was the other time?

Mr. PROCTOR. It would have been similar, renewal, or there was a time period there we could not visit with the McDougals, wherever they may be at that time, so Mrs. Clinton at that time came in and helped with sending papers back and forth and renewal documents.

Mr. CHERTOFF. You kept giving the renewals?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. When was the loan paid off?

Mr. PROCTOR. Approximately 1992.

Mr. CHERTOFF. That's about 14 years after it was first obtained?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. By the way, did you have a conversation with Susan McDougal in which you told her you were considering calling the loan at some point in late 1987 or early 1988?

Mr. PROCTOR. I don't remember the exact time. I did have a conversation with Mr. and Mrs. McDougal at different times were not taking the personal financial statements serious and we did need to have those in file.

Mr. CHERTOFF. Did you threaten to call the loan?

Mr. PROCTOR. I cannot recall threatening to call the loan. I don't think I ever tell anyone when I want to call your loan. I think that

I may have implied that to be able to renew the loan, we need these things.

Mr. CHERTOFF. Did you ever take a similar position with Mrs. Clinton in speaking to her about needing these financial statements to renew the loan?

Mr. PROCTOR. It's my recollection, yes.

Mr. CHERTOFF. You said in your conversations with Mrs. Clinton, if you don't give us the financial statement, we need them to renew the loan, that's a condition of renewing the loan?

Mr. PROCTOR. No, sir, not at that time. Because at this time, I'd received the waiver, the loan was paid down to what I consider to be an amount that we could do without the financial statements. And what I mean, by that is if, during an exam, the question would not really be asked if those financial statements were in file because our escrow funds were sufficient enough to pay the loan, even if Mr. and Mrs. Clinton and Mr. and Mrs. McDougal were not on the loan any longer.

Mr. CHERTOFF. Take a look at a letter in your package marked February 24, 1988, addressed to Susan McDougal.

Mr. PROCTOR. February 24, 1988?

Mr. CHERTOFF. Right.

Mr. PROCTOR. Yes, I have it.

Mr. CHERTOFF. This letter is to Susan McDougal. It says:

Dear Susan:

As per our earlier telephone conversation, it is once again time for personal financial statements on the McDougals and Clintons and again time for financial statements and income statements on the Whitewater Corporation. Please be sure that all parties sign the appropriate financial statements and forward them to us as soon as possible.

We appreciate your help with this matter. If you have any questions, please feel free to call me.

Was this letter, which refers to an earlier telephone conversation with Susan McDougal, one of those earlier conversations in which you indicated to her you needed the statements in order to renew the loan?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. So as of this time period, in early 1988, you are still in the position of needing the financial statements to renew the loan; right?

Mr. PROCTOR. Correct.

Mr. CHERTOFF. But then on July 15, 1988, about 4 months later, you request a waiver of the financial statement; right?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. Why did you ask for the waiver?

Mr. PROCTOR. At this particular point in time, I said, the escrow funds were sufficient. At this time, it could have been right after an exam, and it may be a time when I was trying to clean up documentation and felt, well, that would be nice to have that and later on I decided that we could do without it based upon those escrow funds being available to make the payments.

Mr. CHERTOFF. There was a change in the financial condition between the end of February and the beginning of July?

Mr. PROCTOR. I would say that in the banking business, 3 months makes a big difference.

Mr. CHERTOFF. That's not an answer, Mr. Proctor, that's a generalization.

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. If you want to say you remember there was a change in the financial condition of the escrow between February 1988 and July 1988, you can if you're comfortable saying that.

Mr. PROCTOR. No, I did not say there was a change. I said there was a change in the financial condition in the banking industry.

Mr. CHERTOFF. Forget the whole banking industry. We're interested in this particular document regarding this particular loan. In this particular loan, are you prepared to say that between the time you were dealing with Susan McDougal, saying we need to have the financial statements to renew, as late as the end of February, and then the beginning of July when you request a waiver of the documentation, there was a material change in the financial condition of this loan that led you to change your view on it? Is that your testimony?

Mr. PROCTOR. No, it is not.

Mr. CHERTOFF. Let me back up a little. There came a point in time that Chris Wade actually got back involved in this loan; isn't that right, Mr. Proctor?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. What he did was he acquired a certain number of lots in return for an airplane? Is that right?

Mr. PROCTOR. And some cash.

Mr. CHERTOFF. Right. He then assumed part of the obligation for the mortgage; right?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. The Clintons and the McDougals remained obligated secondarily behind Mr. Wade, as to the portion that Mr. Wade had taken; right?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. They were all on the hook for you?

Mr. PROCTOR. Right.

Mr. CHERTOFF. Then Mr. Wade took responsibility for at least the lots he had taken over. He was selling some of those lots; right?

Mr. PROCTOR. Correct.

Mr. CHERTOFF. Did there come a point that Mr. Wade wound up saying to the Clintons that he was going to assume or payoff the entire value of the mortgage?

Mr. PROCTOR. I don't know that.

Mr. CHERTOFF. It was paid off in 1992?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. You know that?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. Wade wrote the check?

Mr. PROCTOR. I do not know where the payoff came from.

Mr. CHERTOFF. Would you agree that a lot of time had passed, between the time Mr. Wade had gotten involved and the time he finally paid it off?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. Mr. Patterson, you know something about that, don't you?

Mr. PATTERSON. About what, sir?

Mr. CHERTOFF. I just want to put this in perspective. Here we are in 1992, 14 years after the original loan, and pieces of this loan are still out there and Mr. Wade had been in bankruptcy since before 1992; right?

Mr. PATTERSON. Yes, sir.

Mr. CHERTOFF. Then he came up with the money in 1992. Do you remember when it was in 1992, Mr. Proctor, that Mr. Wade finally paid it off?

Mr. PROCTOR. No, sir, I don't have the exact date.

Mr. CHERTOFF. Was it around late spring, April or May?

Mr. PROCTOR. That seems about right.

Mr. CHERTOFF. Do you know, Mr. Patterson, how Mr. Wade, a man who is bankrupt, which means, of course, that he has more debts than he has assets, how he came up with the money all of a sudden to pay this loan out in 1992?

Mr. PATTERSON. Yes, sir.

Mr. CHERTOFF. Tell us how that happened.

Mr. PATTERSON. We lent him the money at the bank that I worked at.

Mr. CHERTOFF. What bank is that?

Mr. PATTERSON. River Valley Bank & Trust.

Mr. CHERTOFF. Where is that?

Mr. PATTERSON. In Lavaca and Barling, Arkansas.

Mr. CHERTOFF. What's your position with that bank?

Mr. PATTERSON. I have no position now, I was the President of that bank.

Mr. CHERTOFF. Did you own the bank?

Mr. PATTERSON. No, sir. That's why I'm not having the position there.

Mr. CHERTOFF. Who owned the bank?

Mr. PATTERSON. A group of people.

Mr. CHERTOFF. Who was the group?

Mr. PATTERSON. It's public record. I think there was 5 or 60 people. I'm sorry I can't name their names.

Mr. CHERTOFF. Any prominent people from Arkansas in that group?

Mr. PATTERSON. Define prominent.

Mr. CHERTOFF. You don't know what the word prominent means? Someone like a political figure?

Mr. PATTERSON. There were no political figures.

Mr. CHERTOFF. Was there any well known business figure, a corporate executive who was in that group?

Mr. PATTERSON. Not by my opinion.

Mr. CHERTOFF. We'll come back to that in a second. Now who made the decision to loan Mr. Wade the money so he could finally pay off that debt in 1992?

Mr. PATTERSON. I did.

Mr. CHERTOFF. How much money did you loan him?

Mr. PATTERSON. None of this is from my memory, it's been told to me through the various investigative people. I believe it was about \$10,000.

Mr. CHERTOFF. How did you come to lend him the money?

Mr. PATTERSON. He was worth the loan.

Mr. CHERTOFF. I beg your pardon?

Mr. PATTERSON. That's what banks do. He was worth the loan, therefore, he got the loan.

Mr. CHERTOFF. He came to you?

Mr. PATTERSON. No. Mr. Wade and I not only are not friends and not only are not close to each other, he handled his business by telephone.

Mr. CHERTOFF. Mr. Wade has a Whitewater debt, that he's on the hook for, together with the Clintons. You're at this River Valley Bank. How did you come to make him the loan? Did he approach you, either in person or via telephone?

Mr. PATTERSON. He called and applied for a loan. I did not know it was for a Whitewater debt.

Mr. CHERTOFF. You said you were not friends with him?

Mr. PATTERSON. No.

Mr. CHERTOFF. You disliked each other?

Mr. PATTERSON. Probably.

Mr. CHERTOFF. So he picked you to call to ask for a loan?

Mr. PATTERSON. That's true.

Mr. CHERTOFF. You knew he was in bankruptcy?

Mr. PATTERSON. No, I didn't know he was in bankruptcy in 1992.

Mr. CHERTOFF. He didn't tell you he was in bankruptcy?

Mr. PATTERSON. He had told me he was in bankruptcy.

Mr. CHERTOFF. So he asked you for a \$10,000 loan. Did he tell you what it was for?

Mr. PATTERSON. I don't remember that he did, no, sir.

Mr. CHERTOFF. Did he submit a loan application?

Mr. PATTERSON. All these documents would be on record. If you would show it to me, I would tell you if he did it or not. I don't remember specifically, sir.

Mr. CHERTOFF. Did you do a credit check?

Mr. PATTERSON. Mr. Wade, you know, I've been answering your questions specifically. Specifically, he had many loans at the bank. He had cross collateralization on all of the loans. We felt like they were secured. Some of them were quite large. I really don't remember thinking about a \$10,000 loan.

Mr. CHERTOFF. Were these loans he had gotten after he went into bankruptcy?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. So after he went into bankruptcy, you were loaning him additional money?

Mr. PATTERSON. Not additional. Define additional. I guess I should know what that is also but—

Mr. CHERTOFF. My question to you is this: Were these loans that he had taken out before or after bankruptcy, these other loans?

Mr. PATTERSON. OK. As I remember, Mr. Wade was in bankruptcy in the mid-1980's when a lot of people were in financial trouble. As I remember, he got out of bankruptcy at some point in time after that, but before the bank that I worked at made him any extensions of credit.

Mr. CHERTOFF. So he got extensions of credit from your bank after he had emerged from bankruptcy?

Mr. PATTERSON. Well, after he had filed where anything that he had would have been a new deal. You know, bankruptcy gives people the right to start over and anything that we would have done

with him would have been some new deal, as I understand it, starting over.

Mr. CHERTOFF. All right. We all understand what the theory of bankruptcy is.

Mr. PATTERSON. Well, good.

Mr. CHERTOFF. Did Jim Blair have anything to do with this loan?

Mr. PATTERSON. I've never met or never heard of or do not know, other than the newspaper, Jim Blair.

Mr. CHERTOFF. To your knowledge, did Mr. Blair have anything to do with this loan?

Mr. PATTERSON. No.

Mr. CHERTOFF. Did you talk to anybody besides Mr. Wade about making this loan?

Mr. PATTERSON. I don't even remember talking to Mr. Wade about making the loan.

Mr. CHERTOFF. Did he secure this loan? Was it secured with anything?

Mr. PATTERSON. I feel like all of Mr. Wade's credits at the bank that I worked at were secure.

Mr. CHERTOFF. What do you mean, you feel they were secured? I mean, did he execute a note? Was there a piece of property, or some document that said, if he doesn't pay back the \$10,000, you have something you can take and foreclose on?

Mr. PATTERSON. Yes, sir. Anything that Mr. Wade did not pay back at the bank that I worked at, we would have been able to proceed against him on thousands of acres and hundreds of thousands of dollars worth of assignment of escrow contracts.

Mr. CHERTOFF. But my question for you is were those properties previously pledged as security for other loans?

Mr. PATTERSON. I don't know specifically. I answered your question correctly.

Mr. CHERTOFF. Well, my question for you—

The CHAIRMAN. The red light is on, and we will come back to the questions on our time.

Senator Sarbanes.

Mr. BEN-VENISTE. Very, very briefly, to try to follow where this is all going, and remotely what the theory is of this loan to Wade that has anything to do with what this Committee is interested in. I for one, fail to see it, but as I understand it, there was no blanket policy in the State of Arkansas or at your bank that stated that anyone who ever had been in bankruptcy would be forever prohibited from borrowing money from a lending institution. Is that about right?

Mr. PATTERSON. I would say that's about right.

Senator SARBANES. In fact, the bankruptcy laws are designed to enable people who hit a difficult economic circumstance to begin their economic life over again, which might well include access to credit. Isn't that the case?

Mr. PATTERSON. Yes. You're asking my opinion, is what you were asking.

Mr. BEN-VENISTE. Mr. Wade, as you have described, went into bankruptcy in the mid-1980's. He came out of bankruptcy, acquired other assets against which you, in your capacity as President of the bank, made some loans, including this \$10,000 loan?

Mr. PATTERSON. As I understand it.

Mr. BEN-VENISTE. They were all cross collateralized if I understand you. You felt you were well protected on those loans; correct?

Mr. PATTERSON. I feel that we were, yes.

Mr. BEN-VENISTE. Mr. Proctor, if I recall your testimony from several hours ago, 40 percent of the borrowers, in dollar value terms, at your bank in the late-1980's, or mid-1980's, did not have current financial statements on file in their loan portfolios. Is that correct?

Mr. PROCTOR. Yes, sir.

Mr. BEN-VENISTE. With respect to the waiver of the requirement, let's identify a document. It's in your loan file. It's your July 15, 1988 documentation.

Mr. PROCTOR. OK.

Mr. BEN-VENISTE. Let's see if we can put that up on the screen. In July 1988, there was a waiver of personal financial statements of the guarantors on the Whitewater loan that was signed by you; correct?

Mr. PROCTOR. Yes, sir.

Mr. BEN-VENISTE. Or initialed by you, and approved by whom?

Mr. PROCTOR. That is the initials of Mr. Wes Strange, the bank president.

Mr. BEN-VENISTE. The bank president. You gave reasons for that, and I think those should be part of the record. This document is marked PM&S for Pillsbury Madison & Sutro 02263. According to this document, it says the reason for the request is that the payments on the loan are derived from Whitewater escrow contracts controlled by FONB. That's your bank?

Mr. PROCTOR. Correct.

Mr. BEN-VENISTE. The collateral is sufficient to cover the loan; is that correct?

Mr. PROCTOR. Yes.

Mr. BEN-VENISTE. As of that date, what was the outstanding balance on the loan, if you have records to reflect that?

Mr. PROCTOR. Approximately \$50,000 or less at that point. We had a note in 1987, I believe, at \$52,000, so it was under \$52,000.

Mr. BEN-VENISTE. The loan had been paid down to \$52,000. You're stating that according to your analysis, the payments, that would be the sales made of land from the Whitewater Development, would come through an escrow account required by your bank, and would be utilized to pay down the loan as the sales were made?

Mr. PROCTOR. Correct.

Mr. BEN-VENISTE. You felt that was sufficient collateral and you no longer needed financial statements although, if I understand you, the McDougals, the Clintons, and Wade were all personally liable on the loan as well?

Mr. PROCTOR. Yes.

Mr. BEN-VENISTE. The fact that you didn't have their financial statements did not excuse the individuals, including the Clintons, from liability on the loan.

Mr. PROCTOR. That is very true.

Mr. BEN-VENISTE. Even when Mr. Wade came into the picture, that was just additional collateral and security for the loan. You did not excuse the McDougals or the Clintons?

Mr. PROCTOR. Absolutely not.

Mr. BEN-VENISTE. If you had excused the Clintons, I'm sure we would be hearing about that in chapter and verse. But, the bank had the additional value of collateral in the personal statement of Mr. Wade, as well.

Mr. PROCTOR. Correct.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Patterson, what do you do now?

Mr. PATTERSON. I'm self-employed.

Mr. CHERTOFF. In what field?

Mr. PATTERSON. I farm.

Mr. CHERTOFF. You farm?

Mr. PATTERSON. Yes, sir.

Mr. CHERTOFF. When did you leave, what was it, the River Front Bank, River Side Bank?

Mr. PATTERSON. I'm sorry?

Mr. CHERTOFF. What was the name of that bank, River Side Bank?

Mr. PATTERSON. River Valley Bank.

Mr. CHERTOFF. River Valley Bank, sorry. When did you leave River Valley Bank?

Mr. PATTERSON. July 1995.

Mr. CHERTOFF. How long did you work at River Valley Bank?

Mr. PATTERSON. Sixteen years.

Mr. CHERTOFF. Who hired you?

Mr. PATTERSON. I'd have been hired by a Board of Directors.

Mr. CHERTOFF. Was there someone in particular?

Mr. PATTERSON. No.

Mr. CHERTOFF. Who was the Chairman of the Board of the bank when you were hired?

Mr. PATTERSON. The bank was a total stock sale and acquisition. The new group of people, which was a reasonably large group of people for that community, that made up the stockholders, elected Ronnie Udouj, a man named Larry Hearst, and myself as the directors. It was understood that I would be the President of the bank and Mr. Hearst would be the Senior Vice President. Mr. Udouj was the Chairman of the Board.

Mr. CHERTOFF. Where was the bank located?

Mr. PATTERSON. Lavaca, Arkansas.

Mr. CHERTOFF. Which was where relative to Little Rock?

Mr. PATTERSON. It's on the Arkansas River, 150 or so miles west.

Mr. CHERTOFF. Who was the largest shareholder of the bank in 1992?

Mr. PATTERSON. I don't know.

Mr. CHERTOFF. So 16 years earlier, that would be some time in late 1979 or early 1980, you left the bank of Flippin to go to the River Valley Bank?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. How did you come to leave the bank of Flippin?

Mr. PATTERSON. The bank at Flippin asked for me to resign.

Mr. CHERTOFF. They asked for you to resign?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. For what reason?

Mr. PATTERSON. I don't know there was a specific reason.

Mr. CHERTOFF. Do you know if there was a general reason?

Mr. PATTERSON. Well, generally there was, we'd been there 8 years, it was a new charter, and that's probably about as a good time factor for anybody to come, start a new bank and stay. After 4, 5, 6 years, why you're usually on your way somewhere else. The bank was selling, there was new people buying, and there were people selling their stock.

Mr. CHERTOFF. Mr. Ritter, can you help us a little bit. Do you know why Mr. Patterson was asked to leave?

Mr. RITTER. Frank Burge followed him up. I believe he might know better.

Mr. CHERTOFF. I'm sorry. Mr. Burge, do you know why?

Mr. BURGE. Yes, sir.

Mr. CHERTOFF. Why?

Mr. BURGE. Mr. Patterson and a group of investors were trying to start a savings and loan in a contiguous community.

Mr. CHERTOFF. What was the significance of that in terms of his activities at the Flippin Bank?

Mr. BURGE. Direct conflict of interest.

Mr. CHERTOFF. Is that right, Mr. Patterson?

Mr. PATTERSON. It was one of the reasons.

Mr. CHERTOFF. Now, we have that straight. I want to come back to this issue of Mr. Wade, and I want to explain why this is important. We have evidence from prior depositions of Jim Blair that this final payment by Mr. Wade that closed the loans in Mr. Proctor's bank was made during the campaign in 1992, shortly after the press had started to raise issues concerning Whitewater. And there's evidence that Mr. Blair went to Mr. Wade and asked him to pay the loan off. Naturally, the question arises, how did Mr. Wade get the wherewithal to do it. Now, Mr. Patterson, is it your understanding that Mr. Wade, in fact, originally started out in Chapter 11 bankruptcy?

Mr. PATTERSON. I'm not aware.

Mr. CHERTOFF. Would it surprise you to learn he filed his initial Chapter 11 bankruptcy petition on November 1, 1989?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. So it wasn't the mid-1980's that he started this, it was the end of the 1980's; right?

Mr. PATTERSON. I'm sorry?

Mr. CHERTOFF. November 1, 1989, is when he filed his Chapter 11 petition. Do you consider that the mid-1980's, as you testified 15 minutes ago?

Mr. PATTERSON. I thought it was. Yes, sir, I thought he filed bankruptcy quite a bit earlier than that.

Mr. CHERTOFF. Well, do you have reason to doubt that he filed on November 1, 1989? That's our research from the file. Do you have reason to dispute that?

Mr. PATTERSON. I wouldn't dispute a filed document, no, sir.

Mr. CHERTOFF. Then he converted to Chapter 7. Do you know what Chapter 7 is?

Mr. PATTERSON. Yes, I do.

Mr. CHERTOFF. Explain to us what Chapter 7 is.

Mr. PATTERSON. Chapter 7 is ultimate bankruptcy.

Mr. CHERTOFF. Ultimate bankruptcy?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. And he filed that on November 1, 1990. Did you know that?

Mr. PATTERSON. No, sir, I didn't know the date.

Mr. CHERTOFF. Do you know a guy name Claude Jones?

Mr. PATTERSON. I'm sorry?

Mr. CHERTOFF. Do you know a fellow named Claude Jones?

Mr. PATTERSON. No.

Mr. CHERTOFF. He was the trustee on that bankruptcy. Do you know what a trustee does in a Chapter 7 bankruptcy?

Mr. PATTERSON. Limitedly, yes.

Mr. CHERTOFF. Give us your limited idea.

Mr. PATTERSON. I believe he becomes responsible for the assets.

Mr. CHERTOFF. He manages the assets of the bankrupt estate; is that right?

Mr. PATTERSON. OK.

Mr. CHERTOFF. Do you know when Mr. Wade emerged from the bankruptcy?

Mr. PATTERSON. No, sir.

Mr. CHERTOFF. Did you know that Mr. Jones served as trustee until August 9, 1994?

Mr. PATTERSON. No, sir.

Mr. CHERTOFF. You still want to tell us that when you made the loan to Mr. Wade in 1992, that he had already emerged from bankruptcy?

Mr. PATTERSON. Well, no, I wouldn't say that because it is not right evidently.

Mr. CHERTOFF. Now that throws your whole testimony of 15 minutes ago right up in the air. Let's try it again.

Mr. PATTERSON. OK.

Mr. CHERTOFF. Why did you lend Mr. Wade the money?

Mr. PATTERSON. He was worth the loan.

Mr. CHERTOFF. Now, you said—

The CHAIRMAN. How can you say he was worth the loan?

Mr. PATTERSON. If he wasn't, then I made an error. I thought he was worth the loan.

The CHAIRMAN. You said, you didn't like Mr. Wade. You weren't friends. Isn't that true?

Mr. PATTERSON. That's true.

The CHAIRMAN. So what did you look at and what led you to believe that he was worth the loan? Here's a man that the records indicate was in bankruptcy, and had no control of any assets. What, if anything, did you have that indicated that he was worth the loan? Because you spit that out before, he was worth the loan. What do you mean he was worth the loan? Did he call you?

Mr. PATTERSON. Yes.

The CHAIRMAN. He called you up on the phone?

Mr. PATTERSON. I would assume, yes, sir.

The CHAIRMAN. You assume?

Mr. PATTERSON. I never saw him at the bank, so he would have called me, yes, sir.

The CHAIRMAN. He just said, I need \$10,000. What did he say?

Mr. PATTERSON. Well, any time he ever called me, he always wanted a loan.

The CHAIRMAN. Yes. Anybody tell you to be available to make a loan to him?

Mr. PATTERSON. That's what we did for a living, yes, sir.

The CHAIRMAN. Did anybody call you and tell you that Mr. Wade was going to call and you should give him a loan?

Mr. PATTERSON. No, sir.

The CHAIRMAN. Nobody. So the phone rang one day. You haven't told us yet for how long.

Mr. PATTERSON. We made him several loans.

The CHAIRMAN. When was the first time you made him a loan?

Mr. PATTERSON. I don't remember the first loans that we made at the bank I worked at, at Lavaca, and I don't remember the last loans.

The CHAIRMAN. Wait, the last loan you made to him was this \$10,000, isn't that true?

Mr. PATTERSON. I didn't think so but it might have been.

The CHAIRMAN. You mean you made him a loan after that?

Mr. PATTERSON. I thought so.

The CHAIRMAN. Supposing I told you you didn't make him any loans after that?

Mr. PATTERSON. Well, the record would show what we made. We kept a good log of all the loans that were made.

The CHAIRMAN. Now, Mr. Burge, did you take over the bank thereafter?

Mr. BURGE. Yes, sir.

The CHAIRMAN. You got the records dealing with the loans that were made in these transactions back in 1992?

Mr. BURGE. No, I was at the Citizens Bank.

The CHAIRMAN. That's the one that he moved out of?

Mr. BURGE. Yes.

The CHAIRMAN. What's the name of this bank?

Mr. CHERTOFF. This is the Bank of River Valley.

The CHAIRMAN. The Bank of River Valley. Well, we better get the records of the Bank of River Valley.

Mr. PATTERSON. I think that they have been subpoenaed.

The CHAIRMAN. Have we gotten those records? Do we have the records?

Mr. CHERTOFF. I do not believe we have those records.

Senator SARBANES. Is there some bank we missed in Arkansas? [Laughter.]

Mr. CHERTOFF. Evidently they're all connected in some way.

[Laughter.]

The CHAIRMAN. I have to tell you something. I don't think it is humorous, and I'll tell you why. We are not talking about just some loan or any loan. This is a loan made to a fellow who's bankrupt. You come here with a preposterous story about a fellow that you don't even like who calls up, he is in bankruptcy and you make a \$10,000 loan. We ask why, and you say he was worth it. We ask

you, what do you mean he was worth it? You say, well, he was worth it.

Mr. BEN-VENISTE. We have the \$10,000 loan. That was under subpoena.

The CHAIRMAN. I would like to find out the documentation, if any. Why was he worth it? What collateral did he sign? Did he pay it back? Do you know if he paid it back?

Mr. PATTERSON. I do not.

The CHAIRMAN. Are you still at that bank?

Mr. PATTERSON. No, sir.

The CHAIRMAN. When did you leave that bank?

Mr. PATTERSON. I left in July 1995.

The CHAIRMAN. You made this loan when, in 1992?

Mr. PATTERSON. Yes, sir.

The CHAIRMAN. When, May?

Mr. PATTERSON. I didn't remember making the loan.

The CHAIRMAN. You don't even remember making it?

Mr. PATTERSON. No, I do not. But I'm sure that I made it. I have had enough people tell me that the bank did.

The CHAIRMAN. Is it your custom to make a loan to somebody of \$10,000 over the telephone? Did you make it over the telephone?

Mr. PATTERSON. Yes.

The CHAIRMAN. Did you get any collateral for it?

Mr. PATTERSON. I don't remember. I would have assumed that there would have been collateral.

The CHAIRMAN. Mr. Chertoff, go ahead, see if you can —

Mr. CHERTOFF. Mr. Patterson, I understand that when someone is in bankruptcy, they're not supposed to be engaging in financial transactions without court supervision; right?

Mr. PATTERSON. No, I didn't understand that if somebody had filed bankruptcy that they couldn't go make a new deal.

Mr. CHERTOFF. Your understanding is that if you are in bankruptcy, you can make all kinds of deals. You can pay this one and pay that one, totally outside of the supervision of the court that's protecting the pre-existing creditors; right?

Mr. PATTERSON. I'm sorry, you need to phrase that for me again.

Mr. CHERTOFF. All right, let me ask you this, Mr. Patterson. You told us earlier, when we took our first whack at getting the story here, that there were several loans that had been made by River Valley Bank to Mr. Wade. By the way, where was Mr. Wade's center of operations?

Mr. PATTERSON. At Flippin.

Mr. CHERTOFF. Where is Flippin relative to River Valley Bank?

Mr. PATTERSON. Oh, 175, 185 miles.

Mr. CHERTOFF. Is Flippin considered to be in the territory of the River Valley Bank?

Mr. PATTERSON. No.

Mr. CHERTOFF. So it was an out-of-territory loan?

Mr. PATTERSON. Yes, it was.

Mr. CHERTOFF. Were Mr. Wade's other loans from the River Valley Bank out-of-territory loans?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. You said you didn't like Mr. Wade?

Mr. PATTERSON. Well, I said we weren't friends, I believe is hopefully what I said. I probably don't like him, though, if you want to say that. He voted against me back when Frank and everybody voted against me, which was fine.

Mr. CHERTOFF. He was one of the guys who was responsible for kicking you out of the Bank of Flippin'?

Mr. PATTERSON. He was.

Mr. CHERTOFF. For this conflict of interest?

Mr. PATTERSON. That's right.

Mr. CHERTOFF. Yet you are the guy he comes to to get a loan when he's in bankruptcy and he needs to pay off a debt on White-water to clean it up?

Mr. PATTERSON. Well, I didn't know it was for Whitewater.

Mr. CHERTOFF. What did he tell you it was for?

Mr. PATTERSON. I don't really remember. He had several loans at the bank. I believe I've told you that.

Mr. CHERTOFF. That's not an answer, Mr. Patterson. I'm not a banker, but I've had enough to do with banks that I have to tell you, I have never heard of a banker who gives out a loan and says, well, I don't need to know what you need it for because you've got other loans at the bank. Are you telling us that you didn't ask him what the purpose of the loan was?

Mr. PATTERSON. I would have probably asked him what the purpose of the loan was. I don't remember what he said.

Mr. CHERTOFF. Didn't care enough to figure out what he said?

Mr. PATTERSON. Really didn't.

Mr. CHERTOFF. You don't know if you got any collateral?

Mr. PATTERSON. I don't remember.

Mr. CHERTOFF. You had one telephone conversation with him?

Mr. PATTERSON. No, he called the bank reasonably often.

Mr. CHERTOFF. About this loan?

Mr. PATTERSON. No, sir. I don't remember him calling about this loan.

Mr. CHERTOFF. You said you had other loans secured by property. Do you want to change your testimony now about whether those other loans were loans that existed before he went into bankruptcy?

Mr. PATTERSON. Well, I was giving testimony to the best of my memory and recollection. There were loans made at the bank that I worked at and they were on property. And I don't remember how they would work. You would have to take each of the loans and look at it and very carefully see what it was based on.

Mr. CHERTOFF. You think that maybe those original loans were made before he went into bankruptcy?

Mr. PATTERSON. I don't remember.

Mr. CHERTOFF. Do you think maybe the Bank of River Valley, in fact, was one of the creditors in the bankruptcy?

Mr. PATTERSON. I don't remember being a creditor in it.

Mr. CHERTOFF. Had you dealt with Mr. Wade with respect to these other loans? You were President of the bank at this point?

Mr. PATTERSON. I'd have been the one that he started out with.

Mr. CHERTOFF. So you were responsible for making all the other loans to him?

Mr. PATTERSON. Yes.

Mr. CHERTOFF. And you can't remember——

Mr. PATTERSON. I would have been the one responsible for starting out. If they were a certain size, the Board would have had to voted on it. And depending on the nature of the collateral, some person in the bank would have been responsible for handling it.

Mr. CHERTOFF. Do you know some people named Larimore, John and Marilyn Larimore?

Mr. PATTERSON. Say the last name again?

Mr. CHERTOFF. Larimore?

Mr. PATTERSON. I don't know them. I know of the name, yes, sir.

Mr. CHERTOFF. Did you do business with them when you were at the Bank of River Valley?

Mr. PATTERSON. We made them a loan and that was the loan that evidently allegedly it was Wade's asset, it was the wrong purpose of the loan, it was something that was in his bankruptcy. The bank was protected and safe, but he did something wrong, and I believe that was one of the ones that he plea bargained with the Special Prosecutor on.

Mr. CHERTOFF. When did you learn there was a problem with this Larimore loan in the bankruptcy?

Mr. PATTERSON. Well, I didn't know about it being in bankruptcy but the FBI told us and showed us documents on Larimore.

Mr. CHERTOFF. I think, Mr. Chairman, the red light is on.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. I thought we had the file on this \$10,000 loan. We've hit more banks in Arkansas than Bonnie and Clyde. I can't imagine we missed any. Let me ask you this, Mr. Patterson. Did anyone tell you to make the loan to Mr. Wade?

Mr. PATTERSON. No.

Mr. BEN-VENISTE. This \$10,000 loan was made in what year?

Mr. PATTERSON. I believe he said 1992.

Mr. BEN-VENISTE. Taking from your testimony, you don't have a specific recollection of the circumstances or indeed of even having made that \$10,000 loan as you sit here today?

Mr. PATTERSON. I can't honestly say I remember it.

Mr. BEN-VENISTE. But you know that your bank did business with Mr. Wade prior to the making of the \$10,000 loan. This wasn't the first loan that you had made to him?

Mr. PATTERSON. I don't think so. It seemed like we would have had larger loans made earlier.

Mr. BEN-VENISTE. I guess the point here is whether someone told you to please make this \$10,000 loan to Mr. Wade because that was somehow going to help some political situation in Arkansas.

Mr. PATTERSON. That didn't happen.

Mr. BEN-VENISTE. Of that you can be certain?

Mr. PATTERSON. That's true.

Mr. BEN-VENISTE. I've tried to finish it up.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Let me just pull this down, and I'm going to put it on the Elmo so we don't take the time to copy it, but we can all see it. It's an affidavit. It was actually Ozark Air Services, Chris Wade's company; right?

Mr. PATTERSON. I don't know.

Mr. CHERTOFF. It appears from an affidavit filed by Chris Wade that the proceeds of this loan shall be used in my business, agricultural pursuits.

Mr. PATTERSON. Oh. So you told me I made Chris Wade a loan and I really didn't make him a loan? Is that what you're saying?

Mr. CHERTOFF. What I'm telling you, Mr. Patterson, is you actually swore to us that Chris Wade called you up and asked you for a loan. Now that happened; right?

Mr. PATTERSON. Well, I didn't know who he asked it for, and I will tell you, you know, I'm answering your questions, but I haven't had those documents. As a matter of fact, my family had to send thousands of every check that I have ever written from 1978 until a very recent time ago, every deposit that I have ever had is now somewhere and all the copies that you have here in front of me, and I don't have.

Mr. CHERTOFF. Well, for the record, we don't have your personal checks and deposits slips.

Mr. PATTERSON. They're not any good anyway.

Mr. CHERTOFF. I take it you mean the Independent Counsel subpoenaed them?

Mr. PATTERSON. They're gone, yes, sir.

Mr. CHERTOFF. All right. Does this refresh your memory that you didn't really get a purpose from Mr. Wade? I mean, the bottom line is I don't want to do the whole bankruptcy case here, but you know where we're at, Mr. Patterson. Here it is in the middle of a Presidential Campaign. All of a sudden, Whitewater hits the radar screen. Jim Blair makes a trip up to Flippin to talk to Chris Wade. Suddenly, after 14 years, the loan is retired. Now the question that arises is, how does a man who is in the middle of bankruptcy, which means he has all these people he owes money to, how does he all of a sudden get the money in order to pay off this loan on Whitewater? This has not been a burning matter of concern for the last 14 years or 10 years that you were involved in it.

It turns out that he calls you up. You, a person he doesn't even get along with. You wind up giving him a loan over the telephone. You don't remember why you did it. You didn't know he was in bankruptcy. There's no indication that we can determine in the bankruptcy file that this was reported to the bankruptcy court. You're not even sure who the loan was made to. You don't know if it was secured by anything other than a promissory note. And when you talk about all this other property that's available as security, you're not even sure whether that property was part of the bankruptcy or not.

Mr. PATTERSON. Sounds like when I told you I didn't really remember it, I might have been telling the truth.

Mr. CHERTOFF. Mr. Patterson, it sounds like this whole loan was incredibly irregular.

Mr. PATTERSON. No, it wasn't incredibly irregular at all.

Mr. CHERTOFF. You can't even tell us whether this loan was paid back, can you?

Mr. PATTERSON. No, I can't. And you haven't put the document on the screen you was going to show me.

Mr. CHERTOFF. Well, I will be happy to take it down to you. You know, this question about this curious conversation with Mr. Wade just emerged here. And I must say, to my surprise.

Senator SARBANES. Maybe you could give him a copy of that document.

Mr. CHERTOFF. We are giving him our copy.

Senator SARBANES. Mr. Patterson, they will bring the document to you. Did you do a deposition with this Committee's staff?

Mr. PATTERSON. I'm sorry, I couldn't hear you, Senator.

Senator SARBANES. Did you do a deposition with this Committee's staff?

Mr. PATTERSON. Yes.

Senator SARBANES. When was that, do you recall?

Mr. PATTERSON. February 26, 1996. February 22nd, I'm sorry.

Senator SARBANES. When?

Mr. PATTERSON. February 22nd.

Senator SARBANES. You did your deposition?

Mr. PATTERSON. Yes, sir.

Senator SARBANES. Were you shown these documents that you're now being asked about?

Mr. PATTERSON. No, sir. It was over the telephone.

Senator SARBANES. So no documents were sent to you for you to use in the course of your deposition?

Mr. PATTERSON. No, sir.

Senator SARBANES. Thank you.

Mr. CHERTOFF. Just to finish up. Mr. Proctor, was it your understanding that all of Chris Wade's Whitewater lots were pledged as part of his obligation to your bank?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. So your understanding was that any Whitewater property that Wade had was secured——

Senator SARBANES. Mr. Chairman, we'd like to have a copy of the document so we can follow along.

The CHAIRMAN. I'll tell you what we will do. Since it seems to me that we are going to get into some extensive examination of Mr. Patterson, and some documents are not available, we will have some copies made and we will stand in recess until 3:00 o'clock.

[Whereupon, at 1:50 p.m., the Committee was recessed, to reconvene at 3:00 p.m., the same day, Wednesday, May 8, 1996.]

AFTERNOON SESSION

The CHAIRMAN. The meeting will come to order.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

This is where we were when we left. We had a loan which had originally been issued in 1978 by what was then called the Citizens Bank. There remained an unpaid balance on the loan 14 years later in 1992. At that point, the loan was in Mr. Proctor's bank; is that correct?

Mr. PROCTOR. That is correct.

Mr. CHERTOFF. That Whitewater loan was secured by a number of lots of the property of Whitewater; right?

Mr. PROCTOR. Yes, sir.

Mr. CHERTOFF. It was also guaranteed by the people who had the obligation to pay the debt Chris Wade, Bill Clinton, and Hillary Clinton; correct?

Mr. PROCTOR. Well, I was reviewing the security agreement and it appears that the only people that were still liable were the four, the McDougals and the Clintons, the husbands and wives.

Mr. CHERTOFF. They were personally liable?

Mr. PROCTOR. Right. And Wade was only, we only released some lots to him subject to our mortgage to be able to sell, so he really wasn't liable on the loan itself.

Mr. CHERTOFF. Other than the property itself as collateral, the only people who were on the hook personally and provided the personal security were the Clintons and the McDougals?

Mr. PROCTOR. Correct.

Mr. CHERTOFF. By the way, did you know that Mr. Wade was in bankruptcy in 1992?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. Here we are in May 1992, and, as we know from our prior hearings in February, the press had begun to ask questions about Whitewater. There was, I think, an amendment of the Presidential Disclosure Statement shortly thereafter in which the Whitewater loan was added to that Presidential Disclosure Statement for the first time. We have evidence that Jim Blair from Tyson's had made a trip to meet with Chris Wade up in Flippin to ask him to pay off the balance of this loan on which the Clintons and the McDougals were liable, and which were secured by this property.

Now we come to you, Mr. Patterson, you're now with what was called, at one time, the Bank of River Valley, but later becomes the Bank of Lavaca; right?

Mr. PATTERSON. It started out Citizens Bank of Lavaca, and it is now called River Valley Bank & Trust.

Mr. CHERTOFF. All right. Let's call it the Citizens Bank of Lavaca because I think that was the name back in 1992. You were the President of that bank; right?

Mr. PATTERSON. Yes, sir.

Mr. CHERTOFF. In 1992, Chris Wade calls you up; and he's the guy that you've previously told us you don't like. He's the guy who we know is, at this time, in bankruptcy, and he tells you that he wants to take a loan out; right?

Mr. PATTERSON. I believe so.

Mr. CHERTOFF. Does he tell you what the loan is for?

Mr. PATTERSON. Not that I remember.

Mr. CHERTOFF. We've handed out three documents. On the affidavit that Mr. Wade signs for the company which actually physically holds the lots, he indicates the proceeds of the loan are to be used for business and agricultural pursuits, and there's no more detail there. And I take it you didn't ask for any more detail?

Mr. PATTERSON. I don't remember.

Mr. CHERTOFF. Now if both you and Mr. Proctor would look at the other documents I've put before you, you're going to see there are two documents, one from the First Ozark National Bank which is Mr. Proctor's bank, and one from Mr. Patterson's then bank, the Bank of Lavaca.

It looks like to me it's not as you told us earlier, Mr. Patterson. You made a \$10,000 loan based on some other property that was used to secure some other loans that were granted at a time that you don't remember. It looks like what happened was the pieces of property that were used to secure the loan at Mr. Proctor's bank were transferred over to your bank, Mr. Patterson, as security for the loan that you gave to Mr. Wade to pay off Mr. Proctor's bank. Is that pretty much what the story is?

Mr. PATTERSON. No, sir.

Mr. CHERTOFF. Then tell us what your memory of the story is.

Mr. PATTERSON. Well, from this morning, you asked me what we had for collateral, and I told you I didn't know. I just didn't remember. And if I didn't remember, I didn't remember.

We then pushed the situation is did our bank give \$10,000 away to somebody, and my answer, or my intentional response was that in some manner, it would be collateralized. I knew that we'd had business with these people and their associates and their companies, and you know, we weren't a loose bank, and we had collateral. And as I see now, we had these lots as collateral, yes, sir.

Mr. CHERTOFF. Now those lots, Mr. Patterson, happened to be the Whitewater lots which were used to secure Mr. Proctor's loan. You see the other deed of release, when Mr. Proctor's bank was paid off with the money that came from your bank to Chris Wade, the property that was used to secure the original loan from Mr. Proctor's bank moved over to your bank.

In effect, gentlemen, what I'm suggesting to you happened is, the loan was simply moved off the books of Mr. Proctor's bank—and I'm not suggesting from your standpoint, Mr. Proctor, that that was wrong—it was moved off the books of your bank and put on the books of Mr. Patterson's bank. Because what happened is that the property, the loan was paid off to you and the property you held as security was transferred over to your bank and used as security for the loan that was used to pay off Mr. Proctor's bank.

Now it looks like and correct me if you have a contrary memory, gentlemen, what happened here is essentially, Mr. Proctor, your loan got paid off. Then with the property that had been used to secure your loan, an identical amount of money was taken out of your bank, Mr. Patterson, which was used to pay off Mr. Proctor. In effect, the loan moved from Mr. Proctor's bank to Mr. Patterson's bank, with one big exception. When the loan was at your bank, Mr.

Proctor, in addition to the property, it was secured by four individuals personally; right?

Mr. PROCTOR. That is correct.

Mr. CHERTOFF. I gather that security was a part of the security that made you comfortable with the creditworthiness of that loan?

Mr. PROCTOR. Yes.

Mr. CHERTOFF. When the loan reappears on the books of your bank, Mr. Patterson, it has the same property as security, but it doesn't have any personal guarantees anymore. In the transition from Mr. Proctor's bank to Mr. Patterson's bank, the same amount of money is secured by the same amount of property, but Mr. Patterson's bank doesn't have any individual signatories on the loan. There's nobody to go after only the physical pieces of property.

Mr. Patterson, you have the mortgage in front of you. Is there anything besides Whitewater Estates and the promissory note of Chris Wade, who is bankrupt, any other piece of property that secures that mortgage for this loan?

Mr. PATTERSON. On these documents that's in front of me?

Mr. CHERTOFF. Right.

Mr. PATTERSON. I did not see any.

Mr. CHERTOFF. So I think we have finally, at least to my knowledge, a question has been answered. The question was how is it that the Whitewater loan got paid off? By the way, Mr. Proctor, did you ever talk to Mr. Blair about the payoff of this loan?

Mr. PROCTOR. No, sir.

Mr. CHERTOFF. And Mr. Patterson, you said you never spoke to Mr. Blair?

Mr. PATTERSON. Don't know the man. I did not speak to him.

Mr. CHERTOFF. Did you ever talk to anybody from Tyson's Food in connection with this transaction?

Mr. PATTERSON. No, sir.

Mr. CHERTOFF. Is Tyson's a depositor at your bank?

Mr. PATTERSON. No, sir.

Mr. CHERTOFF. Do they do business at the Bank of Lavaca?

Mr. PATTERSON. We've some people that work at a chicken plant that might be owned by Tyson that cashes and deposits checks.

Mr. CHERTOFF. How big was your bank in 1992?

Mr. PATTERSON. I don't know, but the bank was \$4 million when we started there, and it was \$85 million when we left.

Mr. CHERTOFF. That's a story for another day.

Mr. PATTERSON. It's a good story I hope you would think.

Mr. CHERTOFF. With respect to this transaction, Mr. Proctor and Mr. Patterson, what we have is this. We started out with what is a loan, the remainder of the Whitewater loan secured by the remainder of the property and the personal guarantees of four people. It moves over to your bank, Mr. Patterson, and when it makes that move, it winds up being the same loan amount that's a loan secured by the same amount of property, but the four people who had liability had dropped out of the transition.

My question to you, Mr. Patterson, is this. Why were you prepared to accept the loan that Mr. Proctor had four guarantors on without requiring those same people to sign?

Mr. PATTERSON. I didn't know Mr. Proctor had the loan or the four guarantors. Did Mr. Proctor say that I knew that?

Mr. CHERTOFF. No. I am just asking you. Did you explore with Mr. Wade what he was using the money to pay off? Did you examine what the money was going to be used for? Did you do any due diligence at all with respect to this man that you were lending money?

Mr. PATTERSON. I don't remember.

Mr. CHERTOFF. Mr. Chairman, I think on that note I'm done.

The CHAIRMAN. Senator Sarbanes.

Mr. BEN-VENISTE. Well, we've established that Mr. Tyson did not own your bank, he wasn't an officer, he wasn't on the Board of Directors, he wasn't a substantial depositor in your bank. Did you, from time to time, in the relevant years, have a chicken sandwich?

[Laughter.]

Mr. PATTERSON. I don't remember.

Mr. BEN-VENISTE. Obviously, Mr. Patterson, the connection that Mr. Chertoff is straining to find was not there according to everything you know about the ownership and control of the bank; is that correct?

Mr. PATTERSON. Correct.

Mr. BEN-VENISTE. Now let me explore this——

Mr. PATTERSON. I'm sorry. I said correct to what? I mean——

Mr. BEN-VENISTE. Correct to your knowledge that Mr. Tyson did not own, or control the bank, or in some way direct you to make a loan of \$10,500 to Mr. Wade in 1988, I guess? I'm sorry, 1992.

Mr. PATTERSON. 1992.

Mr. BEN-VENISTE. 1992; correct?

Mr. PATTERSON. That's correct.

Mr. BEN-VENISTE. We've established that no one else pressured you to make this loan to Mr. Hale, I'm sorry, to Mr. Wade.

Mr. PATTERSON. Actually the loan was to Ozarks Air something.

Mr. BEN-VENISTE. Ozark Air Services which Mr. Wade was a principal of, I take it.

Mr. PATTERSON. Well, to Ozarks Air. I don't know who the principals were.

Mr. BEN-VENISTE. Mr. Proctor, when your loan was paid off, what was the balance paid off?

Mr. PROCTOR. It was approximately \$10,000.

Mr. BEN-VENISTE. At that time, you had still security for that loan in a number of different lots and assignment of contract; is that correct?

Mr. PROCTOR. That is correct.

Mr. BEN-VENISTE. The security for the loan that you accepted as you now see documented, included the assignment of contracts and the remaining lots are listed, 2, 9, 23, 30, 37, 43, and 44.

Mr. PATTERSON. I don't think I had the assignment of any contracts. I'm not sure.

Mr. BEN-VENISTE. If you check——

Mr. PATTERSON. It was only seven lots.

Mr. BEN-VENISTE. It was seven lots. It says, "Assignment of Contracts" above that. Then in parentheses, it says, "See Contracts."

Mr. PATTERSON. Yes, sir, I see that.

Mr. BEN-VENISTE. Does that reflect there were contracts of sale that were assigned?

Mr. PATTERSON. Yes, sir.

Mr. BEN-VENISTE. In the box marked 4 checked above, it says, "Mortgage, Ucc-1's & Assignments" which reflects a securitization for the loan; correct?

Mr. PATTERSON. Yes, sir.

Mr. BEN-VENISTE. I know that your recollection is not the greatest on this, and that you haven't been shown these documents prior to your appearance here today, but to the best of your knowledge, at the time you made the loan, did you feel that it was adequately secured?

Mr. PATTERSON. Yes. Also, this is kind of a garbage terminology. All these people are from an area where there's a lot of assignment contracts. I'm not saying that I didn't know. I'm saying I don't remember, but it would be normal to put Assignment of Contracts and file a Ucc-1 on any of this type of developmental property as a safeguard and filing it in another place, not at the same place as the mortgage would be recorded.

So I'm not saying that, to my knowledge, I didn't remember there being any contracts. Proctor and I never talked. This would not have been, in my mind, the same Assignment of Contracts that you're talking about.

Mr. BEN-VENISTE. OK. Well, this would mean there would be an Assignment of Contracts if there was an actual transfer of deed?

Mr. PATTERSON. If there was one.

Mr. BEN-VENISTE. And you would still be protected by way of securitization?

Mr. PATTERSON. We'd have put that on nearly any mortgage.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Mr. Patterson, let me just ask you one thing. When did you finally leave this bank?

Mr. PATTERSON. In July 1995.

The CHAIRMAN. What were the terms of this loan? When were they payable? How did it have to be paid back?

Mr. PATTERSON. It would have been a demand loan. We could have required it to have been paid any time with 6 month's notice.

The CHAIRMAN. To the best of your ability, you have no knowledge at this time whether or not the loan was actually paid? You don't recall it being paid one way or the other?

Mr. PATTERSON. I believe I saw where it was paid after I left in some of these papers that you've shown me.

The CHAIRMAN. After you left?

Mr. PATTERSON. I believe that's correct.

The CHAIRMAN. OK, so we can't—

Mr. PATTERSON. If I've seen that—

The CHAIRMAN. No, you don't have any recollection of it being paid before, so that's something the Committee then will have to determine. We may have that information. I don't know whether we do or whether we don't.

Mr. Chertoff, any further questions?

Mr. CHERTOFF. Just one last question for each of you. Earlier you were read a portion of a report from Pillsbury Madison & Sutro, which worked for the RTC in examining a number of questions. I want to ask you, Mr. Proctor, were you ever interviewed by Pillsbury Madison & Sutro?

Mr. PROCTOR. Not that I'm aware of. I've talked to the Independent Counsel but not in regards to the Pillsbury.

Mr. CHERTOFF. Mr. Dewey, were you ever interviewed by them?

Mr. DEWEY. No, sir.

Mr. CHERTOFF. Mr. Denton, were you ever interviewed by them concerning Whitewater, what you've testified about today?

Mr. DENTON. Yes.

Mr. CHERTOFF. When was that?

Mr. DENTON. July 1994, on at least one occasion, I spoke with representatives on at least two other occasions.

Mr. CHERTOFF. Mr. Ritter, were you ever interviewed by them?

Mr. RITTER. No, sir.

Mr. CHERTOFF. Did you ever communicate with them, for example, about your discussions with Mrs. Clinton early in 1980?

Mr. RITTER. With the RTC?

Mr. CHERTOFF. With Pillsbury Madison?

Mr. RITTER. I am not familiar with Pillsbury Madison, sir.

Mr. CHERTOFF. Mr. Patterson, did they ever interview you?

Mr. PATTERSON. I am not familiar with that name, and I don't have any recollection of that.

Mr. CHERTOFF. Mr. Burge.

Mr. BURGE. No, sir.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. BEN-VENISTE. If I may, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Have any of you been interviewed by representatives of the FDIC or the RTC?

Mr. DENTON. Yes, I have.

Mr. BEN-VENISTE. Mr. Patterson.

Mr. PATTERSON. I have not.

Mr. BEN-VENISTE. Mr. Burge.

Mr. BURGE. No, I have not.

Mr. BEN-VENISTE. Very well. Thank you.

The CHAIRMAN. The Committee wants to thank all of those witnesses who have participated today. Most of you have answered the questions in a very straightforward, very truthful way, and I think to the best of your ability. We are indebted to you for your participation.

Thank you.

We stand in recess until tomorrow at 10:00 o'clock.

[Whereupon, at 3:10 p.m., the hearing was recessed, to reconvene at 10:00 a.m. on Thursday, May 9, 1996.]

[Appendix supplied for the record follows:]



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
 Suite 490-North
 Washington, D.C. 20004
 (202) 514-8688
 Fax (202) 514-8802

May 3, 1996

Robert J. Giuffra, Jr., Chief Counsel
 Committee on Banking, Housing and Urban Affairs
 United States Senate
 534 Senate Dirksen Office Building
 Washington, D.C. 20510-6075

Dear Mr. Giuffra:

In your letter of May 2, 1996, you inquire on behalf of the Senate Special Committee whether our investigation would be hindered or impeded if the Committee were to call Harry Don Denton as a witness to provide deposition testimony or perhaps appear at a public hearing. You state that Mr. Denton will only be questioned about matters in connection with the Whitewater investment.

At this time, we do not believe that our investigations and prosecutions would be hindered or impeded if Mr. Denton testifies concerning the Whitewater investment, provided that testimony does not delve into the banking practices of Madison Guaranty Savings and Loan Association ("Madison Guaranty"). Any questions which call for testimony by Mr. Denton concerning the banking practices of Madison Guaranty could lead to claims by the criminal defendants in United States v. James B. McDougal, et al. that their rights to a fair trial were jeopardized. Accordingly, while we do not have substantial concerns about testimony by Mr. Denton about Whitewater at this time, we strongly request that the Committee refrain from seeking any testimony from Mr. Denton concerning the banking practices of Madison Guaranty prior to the conclusion of trial in United States v. James B. McDougal, et al.

If you have any questions about this matter, please feel free to contact me. Thank you for your continued concern for the integrity of our investigation.

Sincerely,

A handwritten signature in dark ink, appearing to read "John D. Bates".

John D. Bates
 Deputy Independent Counsel

cc: Lance Cole, Esq., Democratic Deputy Special Counsel



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

May 7, 1996

Robert J. Giuffra, Jr., Chief Counsel
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Senate Dirksen Office Building
Washington, D.C. 20510-6075

Dear Mr. Giuffra:

On May 3, 1996, we informed you that our investigations and prosecutions would not be hindered or impeded if the Senate Special Committee examined Harry Don Denton concerning the Whitewater investment, provided that the questioning and testimony do not delve into the banking practices of Madison Guaranty Savings and Loan Association ("Madison Guaranty"). You have now asked for our position with respect to the Committee's proposed examination of Mr. Denton concerning his knowledge of the April 1985 fundraiser involving Madison Guaranty. At this time, we do not believe our investigations and prosecutions would be hindered or impeded if Mr. Denton were questioned about matters in connection with the April 1985 fundraiser. However, we reiterate our strong request that the Committee refrain from seeking any testimony from Mr. Denton concerning the banking practices of Madison Guaranty (with the exception of the April 1985 fundraiser) prior to the conclusion of trial in United States v. James B. McDougal, et al.

Please feel free to contact me with any further questions. Thank you for your continued concern for the integrity of our investigation.

Sincerely,

A handwritten signature in dark ink, appearing to read "John D. Bates", with a long horizontal flourish extending to the right.

John D. Bates
Deputy Independent Counsel

cc: Lance Cole, Esq., Democratic Deputy Special Counsel

THE CITY BANK
VERMONT PLACE
NORTH LITTLE ROCK, ARKANSAS 72114
TELEPHONE (501) 372-4700

Personal Financial Statement

(NOTE: Any willful misrepresentation could result in violation of Federal Law.)

Name Bill Clinton S.S. Number 429-92-9947
 Name Hillary Rodham Clinton S.S. Number 352-40-2576
 Home Address 1800 Cent. St. Zip 72206 Telephone 501-376-6884
 Business Address 120 E. 4th St Zip 72201 Telephone 501-375-9171
 Position or Occupation Attorney

STATEMENT OF CONDITION AS OF <u>3/8</u> , 19 <u>87</u>				
ASSETS		DOLLARS	LIABILITIES	DOLLARS
Cash	A	\$ 50.00 00	Accounts & Bills Due	\$
Cash Value Life Insurance	B		Cash Value Insurance Loans	B
Listed Securities	C	100.00 00	Secured Debt Due Banks	H
Unlisted Securities	D	100.00 00	Unsecured Debt Due Banks	H
Accounts/Notes Receivables	E	50.00 00	Accrued Taxes	
TOTAL CURRENT ASSETS			TOTAL CURRENT LIABILITIES	
Real Estate Owned	F		Real Estate Mortgages	F
Real Estate - Partial Interest	G	50.00 00	Real Estate - Partial Interest	G
Automobiles		10.00 00	Secured Debt Due Others	84.00 00
Personal Property		10.00 00	Unsecured Debt Due Others	50.00 00
Other Assets - Itemize			Other Debts - Itemize	
			TOTAL LIABILITIES <u>Supervisor</u>	
			NET WORTH (total assets less total liabilities) <u>206.00</u>	
TOTAL ASSETS <u>290.00</u> <u>5290.00 00</u>			TOTAL LIABILITIES & NET WORTH <u>290.00</u> <u>5290.00 00</u>	
INCOME SOURCE			PERSONAL INFORMATION	
Salary		\$ 135.00 00	Date of Birth: <u>10/26/1946</u> <u>8/14/1946</u>	
Bonus / Commissions			Do You Have a Will? <u>Yes</u> Executor.	
Dividends / Interest		20.00 00	Have you been declared bankrupt? <u>No</u>	
Real Estate Income			Explain:	
TOTAL			Are you a defendant in legal action? <u>No</u>	
			Explain:	
CONTINGENT LIABILITIES AS COMAKER, ENDORSER, GUARANTOR				
Debt Payable By		Debt Payable To		Amount Due

(BOTH SIDES OF THIS STATEMENT MUST BE COMPLETE)

For the purpose of procuring and maintaining credit, I/we submit the foregoing as a true and accurate statement of my/our financial condition. Authorization is hereby given to Twin City Bank to verify in any manner it deems appropriate items indicated on this statement. The undersigned agrees to notify the Lender immediately in writing of any significant changes in such financial condition and also agrees to submit a current financial statement on an annual basis.

The undersigned certifies that the information provided on both sides of this statement is true and correct.

March 28, 19 87

Hillary Rodham Clinton
Bill Clinton
 (Signature)
 (Second Signature if Joint Statement)

(BOTH SIDES OF THIS STATEMENT MUST BE COMPLETE)

CASH - DEPOSITORY RELATIONSHIPS									
SCHEDULE A	Type Account	Account in Name of			Where Deposited		Amount		
		Checking	Walter - HRC & AC			Walter		40.00	

LIFE AND/OR DISABILITY INSURANCE						
Face Value	Name Of Company	Life	Disa.	Beneficiary	Cash Value	Loans
350,000	Union Life	✓		Walter	-	-
350,000	Union Life	✓		Walter	-	-

LISTED SECURITIES - ACTIVELY TRADED						
Number Of Shares	Market Value		Description Of Securities	Name Of		
	Each	Total				
400	50.00	20,000	WAL-MART	HRC		
16	500.00	8,000	Value Partners I	"		
		20,000	Relativity Mutual Fund	"		

UNLISTED SECURITIES - NOT ACTIVELY TRADED - Closely Held				
Number Of Shares	Book Value		Total Shares Outstanding	Description Of Securities
	Each	Total		
1	50.00	50.00	1	Value Partners I
				Relativity Mutual Fund

ACCOUNTS & NOTES RECEIVABLES				
Debt Payable By	Repayment Terms	Amount	Doubtful?	
Ray White - 24 Mortgage	over 5 years	50,000		

REAL ESTATE OWNED						
Description Of Property	Title in Name Of	Date Acquired	Cost	Market Value	Mortgage	
					Amount	Maturity
Marine County	Walter - HRC & AC	1979.71	-	~115,000		

PARTIAL INTEREST IN REAL ESTATE							
Description Of Property	Year Purchased	Original Cost	Market Value Today	Mortgage Owning	Equity Value	Your % Ownership	Your Equity Value

DEBT DUE BANKS, SAVINGS & LOANS, FINANCE COMPANIES, AND OTHERS					
Secured Or Unsecured	Name Of Lender	Repayment Terms	Current Owning	Original Owning	
14,117	Security Bank of	6255/month	14,117	20,000	
70,000	First National Bank	16,000/month	70,000	100,000	

Real Estate Appraisal Certificate

[All classes of R. E. Mfg. Loans Under Section 24 of the F. R. A.]

Amount of Loan \$ 3,780 \$ 182,411.20
 Dated 8-2-78
 Maturity June 2
 Installments per Month 1
 [Year or Month]

Name James B. McDonald et al Address 1400 Central Dr
 Location of R. E. SE 1/4 Sec 17 T12N R10E
 Amount of all prior liens \$ None

If building under construction how far advanced Approximate completion date
 under construction: to be a bond of completion
 Contract Price \$ 242,000

Description
 RESIDENCE: Type, structure, date erected, size of lot, No. of rooms, construction quality:
 Original cost or sale price \$ 242,000 Replacement value \$ 242,000
 Last sale price [Year.....] \$ 242,000 Assessed value \$ 242,000
 Average rent paid in area \$ None Actual or potential rental value \$ None
 Tax status None Annual R. E. Taxes \$ None
 Type of neighborhood None

COMMERCIAL: Description of structure, date erected, present use, condition, type of business district:
 Original cost or sale price \$ None Replacement value \$ None
 Last sale price [Year.....] \$ None Assessed value \$ None
 Gross annual rentals \$ None Net rental earnings \$ None
 Tax status None Annual R. E. Taxes \$ None
 Strictly special purpose realty or adaptable for other uses? None

FARM: Principal source of farm income [dairy, grain, etc.] N/A
 Acres under cultivation 220.24 Pasture acreage 220.24
 Timberland acreage 220.24 Total acreage 220.24
 Normal productivity [good, fair, poor] poor
 Description and condition of dwelling, barns, silos, etc. None
 If dairy farm or ranch, size of herd or flock None
 Last sale price [Year.....] \$ None Tax status None
 Assessed value \$ None Annual R. E. Taxes \$ None

APPRAISED VALUE
 Date of 8/2/78 1100 @ 220.24 \$ 242,000
 Appraisal 8/2/78 1100 @ 220.24 \$ 242,000

INSURANCE
 Fire \$ N/A
 Wind \$ N/A
 Other \$ N/A
 Signatures James B. McDonald
 Appraisers James B. McDonald

2895

1st Ozark National Bank

P O BOX 1351
FLIPPIN ARKANSAS 72624
TELEPHONE (501) 453 2233

February 24, 1988

Susan McDougal
White Water Development Co., Inc.
P.O. Box 7326
Little Rock, AR 72217

Dear Susan:

As per our earlier telephone conversation, it is once again time for personal financial statements on the McDougals and Clintons, and again time for the financial statements and income statements on the Whitewater Corporation. Please be sure that all parties sign the appropriate financial statements and forward them to us as soon as possible.

We appreciate your help with this matter. If you have any questions, please feel free to call me.

Sincerely,

1ST OZARK NATIONAL BANK



Ron Proctor
Vice President

RP/mgp

HOUSE W/W RPT. 7924

CBF 0404

2896

~~CONFIDENTIAL~~ ~~MAILED~~

TO: CREDIT DEPARTMENT

FROM: RON PROCTOR

DATE: July 15, 1988

RE: DOCUMENTATION REQUIREMENT

BORROWER NAME: Whitewater Development Co., Inc.

NOTE NUMBER: R-5885

DOCUMENT: Personal Financial Statements of Guarantors and Financial Statement of

REASON FOR REQUEST: 1) Payments on loan are derived from escrow contracts
controlled by FONE.

2) Collateral is sufficient to cover the loan.

THIS REQUEST IS EFFECTIVE FOR THE TIME STATED BELOW:

Permanently.

☒ Term of this note only.

Extension until _____ only.

Ron Proctor
REQUESTING LOAN OFFICER

[Signature]
APPROVED BY

**CONFIDENTIAL—PRODUCED BY THE RTC TO THE
HOUSE COMMITTEE ON BANKING AND FINANCIAL
SERVICES**

PM&S02263

CBF 0411

AFFIDAVIT

STATE OF ARKANSAS)
) ss.
 COUNTY OF SEBASTIAN)

Comes now before, the undersigned, a notary public in and for the County and State
 aforesaid, Ozark Air Services, Inc. who for their affidavit,
 after being duly sworn, states and says:

On May 11, 1992, I entered into a loan agreement with
CITIZENS BANK OF LAVACA-BARLING, Arkansas, in the amount of \$ 10,500.00.

The proceeds of this loan shall be used in my business/agricultural pursuits.

Further affiant sweareth not. Signed this 11th day of May 19 92.

OZARK AIR SERVICES, INC.

Russell Webb, President

Christ Wade, Secretary

Subscribed and sworn to before me this 11th day of May 19 92.

Ronald D. Wade
 Notary Public

My commission expires:

10-10-92

SECURITY RECEIPTS AGREEMENT

THIS AGREEMENT is made and entered into in Flippin, Arkansas, on this 4th day of May, 1985, by and between Citizens Bank & Trust Company of Flippin, Arkansas, herein after referred to as "BANK", and Ozark Air Service Inc., herein after referred to as "OZARK", wherein the following promises, covenants and stipulations are mutually agreed, to wit:

1. Ozark has entered into an agreement with Whitewater Estates, Inc., for the purchase of lots 2, 3, 4, 5, 6, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20, 22, 23, 24, 28, 30, 35, 37, 43 and 44 of Whitewater Estates Subdivision in Marion County, Arkansas.
2. The Bank presently holds the mortgage on said properties together with others and that said mortgage exceeds \$35,000 dollars.
3. That Ozark is purchasing said properties from Whitewater Estates, Inc., for the consideration of assuming and agreeing to pay \$35,000 dollars of the existing mortgage secured in part by the above properties. That Bank consents to the transfer of title to the above properties but by said consent does not release Whitewater Estates, Inc., from any lawful obligation of payment.
4. That Bank agrees and covenants with Ozark that for each amount of \$1,600 dollars paid on the mortgage Bank will fully release from said mortgage any one of the setout lots as Ozark may designate.
5. That the properties hereto acknowledge the sufficiency of the considerations given for this agreement.
6. Whitewater Estates, Inc., signs hereto by its President and Secretary for the purpose of acknowledging its agreement with Ozark and for the additional purpose of consenting to the release of security by Bank on the terms above set-

out.

CITIZENS BANK & TRUST COMPANY

BY

TITLE: Vice Pres.

ATTEST:

SECRETARY

(SEAL)

ATTEST:

SECRETARY

(SEAL)

OZARK AIR SERVICE, INC.

BY

PRESIDENT

SECURITY RELEASE AGREEMENT

Page 2

WITTENWATER ESTATES, INCORPORATED

BY: James R. McDaniel
PRESIDENT

ATTEST:

[Signature]
SECRETARY

[Signature]
(SEAL)

Borrower's Name and Address Oark Air Services, Inc. PO Box 700 Flippin, AR 72634	Lender's Name and Address CITIZENS BANK OF LAVACA P.O. BOX 629 BARLING, ARKANSAS 72923	Loan Information Loan Number <u>200008158 C</u> Date <u>5-11-92</u> Maturity Date <u>DEMAND</u> Loan Amount \$ <u>10,500.00</u> Renewal Of _____
--	--	--

Note: I promise to pay to you, or your order, at your address above, the principal sum of:

Ten Thousand Five Hundred & no/100

plus interest from DATE at the rate of 8.5 % per year until _____ Dollars \$ 10,500.00 paid

plus additional finance charges (if any) which total _____

(a) ☒ on demand, (b) ☐ on demand, but if none is made, on _____, I will pay this amount as follows:

(c) ☐ on _____ and on the maturity date.

(d) ☐ in _____ installments of \$ _____ each, beginning _____ and continuing on the same day of each month

(e) ☐ in _____ installments of \$ _____ each, beginning _____ when a final payment of \$ _____ will be due

(f) ☐ (other) _____

This mortgage and/or note specifically covers any and all future advances by any and all endorsers. Suit for collection hereof may be maintained in the Greenwood District of Sebastian County, Arkansas.

TERMS: Each payment when made shall be applied first toward accrued finance charges with the remainder of each payment being applied to reduce the principal balance. The final payment may be more or less than the amount scheduled depending upon my payment record.

DELINQUENCY AND DEFAULT: I agree to pay the costs you incur to collect this note in the event of my default, including your reasonable attorney's fees.

☒ If checked, I agree to pay a late charge of a minimum of \$2.50 or 5 % of the amount of a payment which is not paid within 10 days of when it is due, up to a maximum of \$ _____.

☒ If checked, I agree to pay interest at the rate of 8.5 % per year on the balance of this note remaining unpaid after final maturity, including maturity by acceleration.

Security: To secure the payment of the note (as defined on the reverse side):

(1) I acknowledge and agree that you have the right to set off this note against any obligation you have (now or hereafter) to pay money to me.

(2) You may collect this property for release of unearned premiums on any insurance policy insuring me (where you are named as loss payee) and on any policy insuring the property securing this note. You will apply this toward what I owe you.

(3) ☐ If checked, this note is not further secured by any contemporaneous agreement (other than (1) and (2) of this section).

(4) ☒ If checked, this note is secured by a separate Mortgage, UCC-1's

& Assignments dated 5-11-92

(5) **Subsidiary Agreement:** If checked I give you a security interest in the property described below. The rights I am giving you in this property, and the obligations this agreement secures are defined on the reverse side of this form.

Assignment of Contracts (SEE CONTRACTS)

RD#- Lots 2, 9, 23, 30, 37, 43 & 44, Whitewater Estates, Marion County, Arkansas (SEE MIG)

Assumptions: Unless specifically agreed in writing to the contrary, this security agreement and any loan it secures cannot be assumed by any person who buys this collateral as described above from me, and I understand and agree that if I attempt to transfer any interest in the collateral (including, but not limited to, possession) I will be in default on all secured obligations.

This collateral will be used for business purposes.

☐ If checked, this is a purchase money loan. You may include the name of the lender on the check or draft for this loan.

Signatures: I agree to the terms of the note and security agreement above (including those on the other side of this form) and acknowledge my responsibility as borrower to pay the note on the date COPIABLES: SEE NOTICE TO BORROWER ON REVERSE SIDE OF THIS FORM.

Any person who signs within this enclosure does so to give you a security interest in the property described above, but assumes no personal obligation to pay this note.

Name _____ Date _____

Signature for Lender: James T. Patterson, Pres.

Signature: Russell Webb, President

Signature: Chris Wade, Secretary

Signature _____

SIMPLE INTEREST NOTE, DISCLOSURE, AND SECURITY AGREEMENT

© 1991 BANKERS TRUSTING, INC. ALL RIGHTS RESERVED. FORM 1000-00-0001 (1/1/90) CUSTOMIZED

Corporation Mortgage... With Power of Sale

KNOW ALL MEN BY THESE PRESENTS

Ozark Air Services, Inc.

a Corporation organized and existing under the laws of the State of Arkansas
 with its principal place of business located in Flippin (City)

Arkansas (State), hereinafter called MORTGAGOR, for and in consideration
 of the sum of ***Ten Thousand Five Hundred & no/100 DOLLARS

to it in hand paid by CITIZENS BANK OF LAVACA
 MORTGAGEE, the receipt whereof is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey unto the said
 MORTGAGEE and unto ITS heirs/successors and assigns the following described real estate
 situated in Marion County, State of Arkansas, to-wit:

Lots 2, 9, 23, 30, 37, 43 & 44 Whitewater Estates.

Filed for Record on this

13 Day of May, 1982

at 3:41 O'Clock P.M.

Mary Jo Layton, C. S. S.

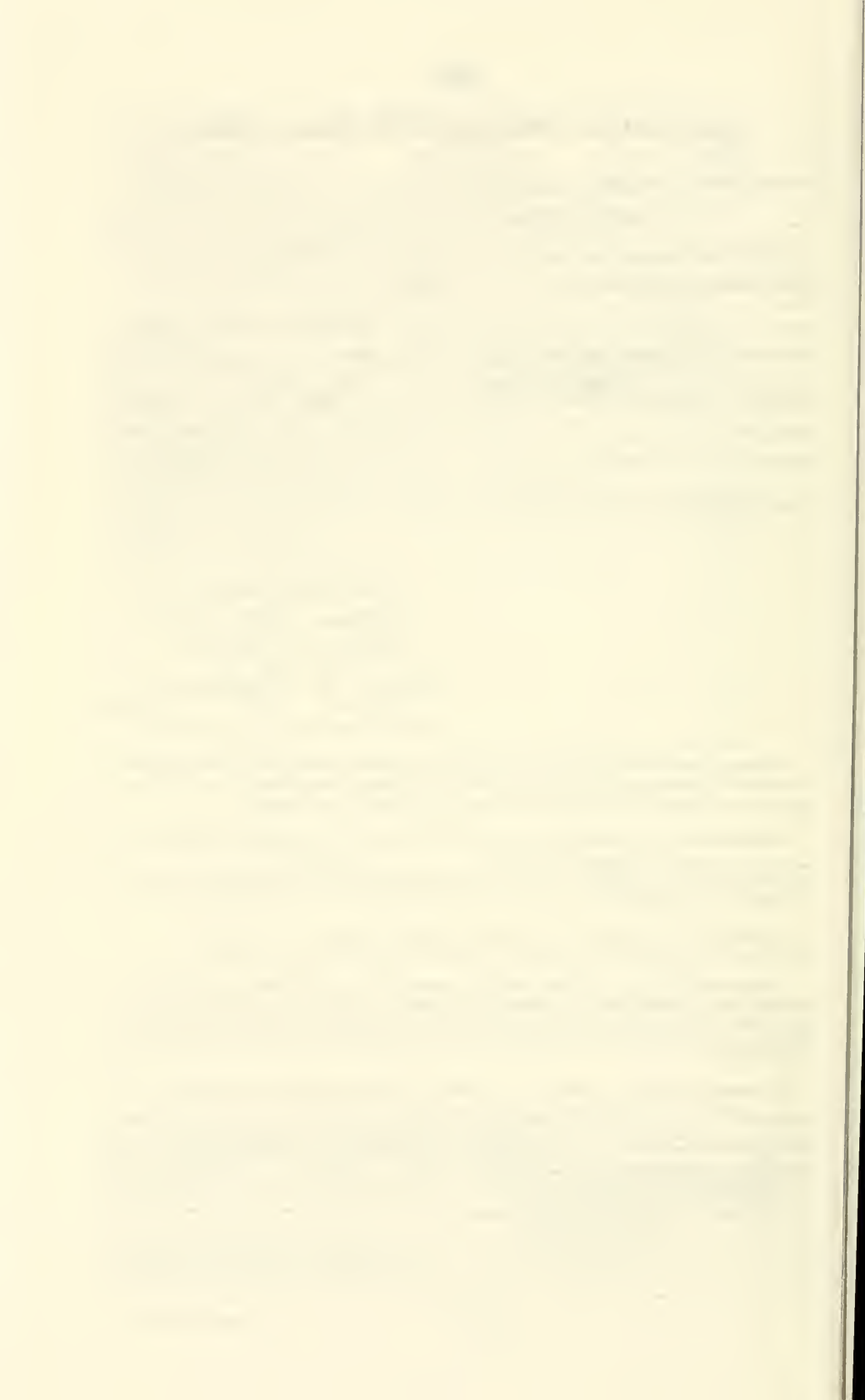
This mortgage shall also be security for any other indebtedness of whatsoever kind that the GRANTEE or the holders or owners of this mortgage may hold against GRANTORS by reason of future advances made hereunder, or otherwise, by purchase or otherwise, up to \$10,000,000 to the time of the satisfaction of this mortgage.

By accepting delivery of this mortgage and causing it to be filed for record, the mortgagee will be deemed to have evidenced its agreement and obligation to advance \$_____ in addition to the \$_____ initially loaned, to be used in construction of a house on the above described property. Proceeds herein are for materials and labor only for said construction.

TO HAVE AND TO HOLD the same unto the said MORTGAGEE and unto their heirs/successors and assigns forever, with all the privileges and appurtenances thereto belonging.

And the MORTGAGOR for its successors and assigns, covenants with the said MORTGAGEE, its heirs/successors and assigns, that it is lawfully seized in fee of the aforementioned premises: that they are free from all encumbrances, that it has good right to sell and convey the same to the said MORTGAGEE as aforesaid, and that it will and its successors shall forever warrant and defend the title to the said Real Estate against all lawful claims and demands whatever.

The foregoing conveyance is on condition: That, Whereas, the said MORTGAGOR, is justly indebted to the said MORTGAGEE in the sum of ***Ten Thousand Five Hundred & no/100 DOLLARS for money borrowed evidenced by a promissory note of even date and like amount due and payable as therein set out.



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, MAY 9, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:25 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

I want to apologize for the delay in starting the hearing this morning. Ms. Thomasson, would you stand for the purposes of taking the oath.

[Witness sworn.]

The CHAIRMAN. Thank you.

Ms. Thomasson, do you have any statement that you would like to make?

SWORN TESTIMONY OF PATSY L. THOMASSON DEPUTY ASSISTANT TO THE PRESIDENT & DEPUTY DIRECTOR OF PRESIDENTIAL PERSONNEL

Ms. THOMASSON. No, sir.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Good morning, Ms. Thomasson.

I want to take you back to 1993. I'm going to hold up and I think you have probably seen this before, this is a Xerox copy of a notebook that was in Vince Foster's office, and more specifically in his briefcase, at the time of his death on July 20th, which was held by Mr. Nussbaum for over—well, I guess for the balance of his tenure as White House Counsel, and then was held later in the White House Counsel's Office for over a year before it was turned over to the authorities.

That notebook is filled with his observations and his comments about the handling of the Travel Office firings, including comments about you and your activities. When is the first time you saw that notebook?

Ms. THOMASSON. I have never seen the original notebook that I recall.

Mr. CHERTOFF. When is the first time you learned of the existence of the notebook?

Mr. WILLIAMS. You mean this notebook you just handed to us?

Ms. THOMASSON. I don't know that I knew it existed before you just made your statement, Mr. Chertoff.

Mr. CHERTOFF. You mean to say that, until today, you had never heard or seen anything, even in the media, about the fact that Vince Foster had a large notebook that was in his briefcase at the time of his death which contained information about the Travel Office firings? Until today you didn't know that?

Ms. THOMASSON. I don't read all that stuff in the paper, Mr. Chertoff, I don't have time for it.

Mr. CHERTOFF. Did you know that Mr. Foster was working on putting together some kind of a report or some kind of a memo with respect to the Travel Office matter before he died?

Ms. THOMASSON. I don't have any knowledge of that, sir.

Mr. CHERTOFF. You worked with Mr. Foster with respect to the Travel Office matter; isn't that correct?

Ms. THOMASSON. I did.

Mr. CHERTOFF. Now at that period of time you were Mr. Watkins' Deputy, that's to say in 1993?

Ms. THOMASSON. Yes, I was.

Mr. CHERTOFF. And that would be David Watkins. What was his exact title in 1993?

Ms. THOMASSON. He was Assistant to the President for Management and Administration.

Mr. CHERTOFF. You were his Deputy?

Ms. THOMASSON. I was his Deputy.

Mr. CHERTOFF. Now, you know that Mr. Watkins wound up writing a memorandum sometime after he was, I guess, reprimanded as a consequence of an internal White House review for his handling of the White House Travel Office matter?

Ms. THOMASSON. I do.

Mr. CHERTOFF. You know that because he showed it to you; is that right?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. When did he show it to you?

Ms. THOMASSON. Sometime in the fall of 1993.

Mr. CHERTOFF. You reviewed it?

Ms. THOMASSON. Yes, I did.

Mr. CHERTOFF. You made marginal notations?

Ms. THOMASSON. I did.

Mr. CHERTOFF. Am I correct that, with respect to this, and you have a copy in your package in front of you; it's headed, "Privileged and Confidential, Memorandum for," and then there's no name listed, and it says, "From David Watkins." It's marked, "Draft." You saw this in the fall of 1993?

Ms. THOMASSON. Sometime in the fall of 1993.

Mr. CHERTOFF. Mr. Watkins gave it to you?

Ms. THOMASSON. Yes, he did.

Mr. CHERTOFF. He gave it to you so you could make comments?

Ms. THOMASSON. He asked me to read it.

Mr. CHERTOFF. You made comments on it?

Ms. THOMASSON. I made a couple of notations on it, yes.

Mr. CHERTOFF. Am I correct that, except for the question mark and the lines on the first page, you have identified all the handwriting on this as being your writing?

Ms. THOMASSON. I did not identify the handwriting on the second—on the second page of the memo as mine. I don't know whose that is. I identified the information on the third page, where it says, "John Rogers," and "Firing of prior Travel Office Head" is mine. And the writing on CGE 12290 is mine. That's all the handwriting I see.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. The Travel Office is not within the scope of our Resolution, and in fact, it's being looked into by the Committee over in the House, chaired by Representative Clinger. Now, I'm not really making his argument for poaching on his territory, although he conceivably might be sensitive to that, but I am making the point that it's not within the scope of the inquiry of this Committee to look into the Travel Office matter.

In fact, you know, it is being looked into, so it is not as though it is not being examined. It is being examined by a Congressional Committee, and I assume from what I read in the newspaper, at least in some respects by the Independent Counsel, but it is not within the scope of our Committee.

The CHAIRMAN. I think the Senator makes a fair point and we do not intend nor do I think it would be the call of this Committee to move into the Travelgate matter per se. However, as it relates to the handling of papers in Vince Foster's office, to exploring the motivation of those people who went into Foster's office the night of his death or thereafter, or handled papers in his office, it is an important element. Obviously, it is an element that came to the Committee's attention well after we had any reason to believe that there was any possible connection with the movement of papers, et cetera.

So for a limited period, I am going to permit a reasonable exploration into this area as it relates to the papers, to why people may or may not have been interested in them. Was that part of the consideration, was that an area that they were looking into, was this memorandum something that Ms. Thomasson knew about.

This was the first time I've heard that she was aware, you might say well, this is out there in the public domain. But just the way, believe it or not, Ms. Thomasson has indicated she doesn't follow everything with minute detail in the press, even those matters that people may think have been of concern, I have no memory of having seen the fact—until you testified now, that you had even seen these, nor did I have any reason to believe or did the Committee have any reason to believe that these papers may have been of some interest.

So for those purposes, I am going to permit Mr. Chertoff to continue. Go ahead, Mr. Chertoff.

Mr. CHERTOFF. Now—

Senator SARBANES. I take it we are not going to go into the substance of these?

The CHAIRMAN. No, I don't intend to get into that.

Mr. Chertoff.

Mr. CHERTOFF. Before we get into the questions that had been asked previously regarding this matter, Ms. Thomasson—

The CHAIRMAN. There is a question concerning some previous testimony and I believe that the Committee has an obligation to ascertain what the facts are. If there are going to be corrections made, we will have them made.

Mr. CHERTOFF. This memorandum which you saw sometime in the fall of 1993, you returned a copy to Mr. Watkins?

Ms. THOMASSON. I thought I returned the only copy that he gave me to Mr. Watkins.

Mr. CHERTOFF. You made whatever notations you felt were appropriate and then you returned it; right?

Ms. THOMASSON. I thought I did. I did not return it to him.

Mr. CHERTOFF. In any case, it is clear you did review the document in the fall of 1993?

Ms. THOMASSON. I've answered that. Yes, I have.

Mr. CHERTOFF. I want to direct your attention back to July 11, 1995, when, in connection with your deposition for this Committee regarding the handling of documents in Mr. Foster's office—and I don't think you will dispute the fact that, late in the night after his death, you in fact were in his office. I mean that's undisputed; is that correct?

Ms. THOMASSON. Sometime around 10:00 p.m., yes.

Mr. CHERTOFF. In connection with our examination of that issue, you were asked a series of questions in your deposition concerning the work you had done with Mr. Foster before his death, which were designed to examine your state of mind and to help us explore the question of why Mr. Watkins may have chosen to ask you to go into the office. You answered at some length about the nature of your work, without, I might add, any objection to our exploration of this by anybody in the room, so that this was clearly within the scope of what we examined in the course of the deposition. It was relied upon by—certainly by myself, I can't speak for anybody else but I presume by others, in determining what to pursue with the investigation of the handling of Mr. Foster's office after his death.

Therefore, what I would like to do is not to get into the underlying merits of the wisdom or lack of wisdom or the propriety of what was done in the Travel Office, but to determine the accuracy of your statements about what occurred, as they were given to this Committee under oath, in July 1995.

I think you have a copy of your deposition in front of you. And if you do, I would like to ask you to turn to page 33.

Mr. WILLIAMS. Again, we just received the minutes before the hearing started.

Mr. CHERTOFF. Well, I assume, Ms. Thomasson, you did have a copy of this deposition. I think it was sent to you last year, in connection with your testimony before the Committee. But if you didn't bring it, we made sure you had another copy. I want to first direct your attention to page 33, where you indicate that you worked with Mr. Foster during the spring of 1993 before his death.

Question: What in particular was the work that you did in connection with that?

Answer: In connection with that, the White House staff in the Office of Management and Administration had been reviewing every office under its purview to make sure its operations were what we wanted them to be and to make sure they operated in a manner that we thought was effective for the Clinton Administration.

One of the offices we had not done was the White House Travel Office and we were working to evaluate the White House Travel Office and its function and its ability to function. When we got to that particular office, it was so different than every other office that we had looked at because we had already looked at the Office of Administration and we had looked at various offices within the White House, but the White House Travel Office was the only one that handled cash every day. None of the other offices handled cash on a daily basis because of the nature of their work.

We did not have on staff at the White House accountants, numbers guys, bean counters, auditor types. As a result of that, we opted to hire someone from the outside to come in to help with that particular part of the review of the Travel Office.

I want to stop at that point, Ms. Thomasson, and I want to ask you this. The suggestion in that testimony is that in the course of a normal review of all of the functions at the White House, you finally hit the Travel Office, and because there were issues of a financial nature with the Travel Office, you went out and hired accountants and auditors.

Ms. Thomasson, the reason the accountants and auditors were brought in was because Ms. Cornelius, who had been assigned by Mr. Watkins to work in the Travel Office, had come to Mr. Watkins and said that she had uncovered what she viewed as irregularities; and because Mr. Watkins understood that there was a desire and intent on the part of Harry Thomason—no relation to you I want to make clear—to have his friends involved in the Travel Office operation. Isn't that the fact?

Senator SARBANES. Mr. Chairman, I know Mr. Chertoff wants to lay out the Travelgate, and I guess it has been troubling him that Congressman Clinger has been doing it, but this doesn't comport with what you indicated the purpose of this session was going to be, and I don't think we ought to do Travelgate all over again.

The CHAIRMAN. I agree we should not attempt to get into the details of Travelgate nor do we intend to, but I do believe, as it relates to testimony that was given, particularly by Ms. Thomasson, that the Committee has an obligation to ascertain what the facts were, the state of mind of the people who were looking for documents in Mr. Foster's office and apparently in his briefcase, the notebook. This is an area that Ms. Thomasson has given testimony. So for these purposes, I'm going to permit it. Mr. Chertoff is attempting to set the background—

Senator SARBANES. That's a discreet way of putting it, Mr. Chairman.

The CHAIRMAN. OK, but he is attempting to set the background. I am going to ask him to get to it, because as I have indicated to Counsel on the Minority, I think it is fair, we don't need a replay of history, so to speak. There's that tendency, because you want to try to put a setting to it, but we are aware of most of the things that have taken place, the record contains them, so we don't have to revisit it again.

I was probably a little tough on Mr. Ben-Veniste when I said let's not ask every single witness was there a banking crisis in 1988 and what was the aspect, but he wanted to set the tone in which things took place. So I will permit both Counsel some latitude in that. But I will ask them to go more to the issue and to the facts. Otherwise

we will be here for days and I don't think that serves the interests of getting the facts, and it doesn't really help make the points that both sides think are necessary. I'm going to ask Mr. Chertoff, in that same spirit that I mentioned to Mr. Ben-Veniste yesterday, if we could get to it.

Mr. CHERTOFF. I am going to focus directly on your prior sworn testimony before this Committee, which you gave under deposition last year? That's what we'll keep focused on. At page 34 of your deposition, you describe the decisionmaking process to hire the auditors, which was a result of an ordinary course review of all of the operations. In the course of that, for no reason other than you didn't have accountants on staff, you came to the Travel Office, and you hired accountants. Is your testimony about the reason and the manner in which the accountants were hired on pages 33 and 34 of your deposition correct or not?

Ms. THOMASSON. It's correct, sir.

Mr. CHERTOFF. So your testimony is that the accountants were hired, not because of any allegations or claims that you were aware of concerning problems in the Travel Office, but as part of an ordinary course review of all of the operations? That's your sworn testimony today?

Ms. THOMASSON. It's my sworn testimony because there was over \$10 million that we found that went through that office on an annual basis. We didn't have anyone who had the knowledge or the background or experience to look at that—those kinds of accounts and do a reasonable audit on that. We needed to do that; we hired those people to come in and do it.

Mr. CHERTOFF. Your testimony is that it was done before there was any allegation or any decision to substitute new people in the Travel Office for the ones who were then occupying that office?

Ms. THOMASSON. That decision was made before any decision was made about putting somebody new in there, or terminating the former employees of the Travel Office.

Mr. CHERTOFF. Your testimony was: "We talked among David Watkins and Vince and myself, and we agreed that it would be a better idea to get someone from the outside than someone from the inside." Is it your testimony that those were all the people who discussed the question of bringing auditors in?

Ms. THOMASSON. Where are you reading from?

Mr. CHERTOFF. Page 34 of your testimony, paragraph beginning at line 11.

Ms. THOMASSON. I don't recall talking to anyone else but David and Vince with regard to that.

Mr. CHERTOFF. So you didn't talk to Mr. Eller about it?

Ms. THOMASSON. I didn't talk to Mr. Eller about it.

Mr. CHERTOFF. Were you aware that Mr. Eller had discussions with people about it?

Ms. THOMASSON. I was aware Mr. Eller had an interest in it.

Mr. CHERTOFF. Were you aware that the First Lady had an interest in it?

Ms. THOMASSON. I don't recall. The First Lady never called me about it, never talked to me about it.

Mr. CHERTOFF. Isn't it a fact, Ms. Thomasson, that contrary to the notion that this was an ordinary course review which just came

up in turn, the decision to have auditors called in was made on an emergent basis or urgent basis, short-circuiting the normal plan for doing a management review?

Ms. THOMASSON. The process for the management review was set by the office staff, and when we got to the Travel Office, it was, the determination to hire the outside auditors was on an urgent basis and we did have them come in on a quick basis.

Mr. CHERTOFF. You would agree with me you short-circuited the long-term plans to do the review in order to turn to the Travel Office immediately; right?

Ms. THOMASSON. We didn't have a long-term plan, other than to say we were going to review all offices within the Office of Administration and within the White House office, to look at each operation. We did not have a fixed schedule that said we're going to do this office this week and another office the next week, because we had to do all our other work in addition to doing the review. We did not have a fixed schedule.

Mr. CHERTOFF. Let me ask you to turn the draft of Mr. Watkins' memo which you indicated you reviewed and which has your handwriting on it. If you'll turn to page CGE 12288.

Senator SARBANES. Do we know the date of this memo?

Mr. CHERTOFF. I believe the witness testified she saw it in the fall of 1993.

Senator SARBANES. The fall of 1993?

Mr. CHERTOFF. Correct. This is presumably after Mr. Foster's death but before her testimony. I want to direct your attention, do you have page 12288 in front of you?

Ms. THOMASSON. I do.

Mr. CHERTOFF. You see the last line, next to last paragraph says:

If given time to develop, the original plan to reorganize the Travel Office for a smooth transition in September would have allowed the Travel Office employees to seek other Federal placement, along with other Executive Office of the President staff, in anticipation of the end of the fiscal year staff cuts; however, when pressure began to build for immediate action in the Travel Office, the long-term plans were short-circuited.

Is that, in fact, what really happened?

Ms. THOMASSON. Mr. Chertoff, you would have to ask Mr. Watkins about that because I wasn't there in February 1993.

Mr. CHERTOFF. You read it. You got there in March, though?

Ms. THOMASSON. March 1.

Mr. CHERTOFF. The auditors were hired March 13 and 14; right?

Ms. THOMASSON. May 13 and 14.

Mr. CHERTOFF. May 13 and 14. So during the period of time you were there, you presumably had some knowledge of the planning of how the Travel Office review was going to take place; right?

Ms. THOMASSON. I had no exposure to the Travel Office until sometime after May 1.

Mr. CHERTOFF. You're not in a position to agree or disagree with this statement in the memo; is that your testimony?

Ms. THOMASSON. That's exactly right.

Mr. CHERTOFF. During the period of time that this review with the auditors was going on, you were involved in reporting on that to Mr. Kennedy and Mr. Foster?

Ms. THOMASSON. I was.

Mr. CHERTOFF. Mr. Foster was involved in this process; right?

Ms. THOMASSON. He was.

Mr. CHERTOFF. You obviously were aware of that because you were involved in the process?

Ms. THOMASSON. Absolutely.

Mr. CHERTOFF. Was there something called a SWAT team at the White House? The group with the informal designation of a SWAT team was also involved in handling this Travel Office matter in May?

Ms. THOMASSON. They were involved in all of the management reviews of all the offices within the Office of Administration in the White House office.

Mr. CHERTOFF. Were they known as the SWAT team?

Ms. THOMASSON. From time to time.

Mr. CHERTOFF. Were you part of the SWAT team?

Ms. THOMASSON. No, I was not.

Mr. CHERTOFF. Was Mr. Foster part of the SWAT team?

Ms. THOMASSON. He was not.

Mr. CHERTOFF. At the point at which a decision was made to go hire outside auditors, had a decision already been made to substitute new people for the Travel Office staff and to take over the Travel Office function before the auditors were hired?

Ms. THOMASSON. Not to my knowledge.

Mr. CHERTOFF. Isn't it a fact that the very day there was discussion about going out to hire the auditors, you had discussions with people in the White House about the propriety of hiring new people to take over the office without having a bid, an open bid procurement process?

Ms. THOMASSON. One of the items that we talked about was doing what the rest of the Government does, and to outsource all our travel arrangements at the White House. It was my understanding at that time that the White House was the only Government agency that didn't outsource its travel arrangements.

Mr. CHERTOFF. I'm asking you a different question and I'll put it in perspective with the dates. We have a chronological record prepared by the White House itself. It's a 2-page chronology which is in your package, CGEPR 563; it's a typed chronology. Do you recognize the handwriting on the chronology?

Ms. THOMASSON. I do not.

Mr. CHERTOFF. Now on May 13th, it says, "David Watkins contacts Larry Herman of Peat, Marwick and asks the company to review Travel Office files." Do you have reason to dispute that it was on Thursday, May 13th, that the initial contact for Peat, Marwick was made?

Ms. THOMASSON. No.

Mr. CHERTOFF. Then the next day, Friday, May 14th, it says, "Larry Herman and five other Peat, Marwick accountants began review." Do you have any reason to dispute that that's, in fact, what happened?

Ms. THOMASSON. I do not.

Mr. CHERTOFF. You see that this chronology was prepared on May 25, 1993? That was before Mr. Foster's death; is that correct?

Ms. THOMASSON. Yes, it is.

Mr. CHERTOFF. When was the first time you saw this chronology?

Ms. THOMASSON. Today.

Mr. CHERTOFF. No one ever showed you that chronology?

Ms. THOMASSON. I do not recall having seen this before.

Mr. CHERTOFF. This is a White House document, CGEPR 563, I think it was distributed to everybody. I think it is a public document, or made public by the House.

Senator SARBANES. This is a House document?

Mr. CHERTOFF. That's correct, Mr. Chairman.

Senator SARBANES. Well, Mr. Chairman, we are back doing the House's job again.

The CHAIRMAN. We're not going to do the House's job, but—

Senator SARBANES. That's what we're doing.

The CHAIRMAN. This is a matter of public record. We are not going to get into the details of this, but we are going to get into what Ms. Thomasson has testified to before, what she knew, et cetera, and for those limited purposes, I am going to allow Mr. Chertoff to continue.

Senator SARBANES. I guess I need to have some understanding of what Mr. Chertoff's theory is within the scope, because if there is such a theory, he could get to that with Ms. Thomasson. What we're doing right now is just marching through the Travelgate step by step. I take it these are documents from the Clinger Committee; is that right?

Mr. CHERTOFF. That's correct.

Mr. Chairman, my theory is very simple. We took a deposition of Ms. Thomasson to determine what was on her mind or what her knowledge was concerning Mr. Foster's activities when Mr. Watkins directed her to go into that office—

The CHAIRMAN. I think it's important to note that Mr. Watkins directed Ms. Thomasson to go into the room. Consequently, there's a very real question as to why and what it testified to—why people were directed to go into Vince Foster's office and what people may or may not have been concerned about and what they may or may not have been looking for. That's a very real question, and we will permit that.

Ms. THOMASSON. Mr. Chairman, if I could just correct one thing.

The CHAIRMAN. Certainly.

Ms. THOMASSON. I was not directed to go into Vince Foster's office. When David Watkins paged me to let me know that Vince Foster had killed himself, I was distressed, I was disturbed that my friend had killed himself. And at that time I said what can I do to help, where are you, do you need me at the house to answer the phone, what do you need me to do. And he said do you mind going to the White House and just see if Vince Foster left a suicide note.

The CHAIRMAN. And we will examine that.

Mr. CHERTOFF. Now in connection with that question of your state of mind, what you knew as of July 20th, we explored that in your deposition. Your involvement in working with Mr. Foster, logically suggests what you knew or could have supposed was in Mr. Foster's office.

And as I say, we had a considerable amount of testimony from you in the deposition about this Travel Office activity without objection. That's what I want to review now, in light of documents that have become known after you testified.

There came a point in time that outside people were brought in to take over the Travel Office function after the employees were removed. Were those people identified and selected before there was a decision to remove the Travel Office people?

Ms. THOMASSON. Not to my knowledge.

Mr. CHERTOFF. I want to go back to your testimony, page 37 of your deposition, you were asked at line 11:

Question: At this point in time, was there a substitute for the company or agency that was handling the money in the Travel Office? Was there a change in the identity of the people who would be handling the travel out of the White House?

Answer: Not at that point.

Question: Did there come a point where there was a change?

Answer: Yes, there was.

Question: When was that?

Answer: It was the next week after the members of the Travel Office had been terminated. We had a firm that volunteered to come in and help us get through some period of time until we could let a contract to either do it through contract and have the work done by contractor, or we could make a determination on who we wanted to run that office on an ongoing basis.

It's still your testimony that it wasn't until after the members of the Travel Office had been terminated that new people were selected to come in?

Ms. THOMASSON. Based on my knowledge.

Mr. CHERTOFF. I want to direct your attention to the Travel Office chronology, CGEPR 563, the 2-page typed document.

Senator SARBANES. That came from the House Committee?

Mr. CHERTOFF. That's correct.

May 10—Harry Thomason and Darnell Martins meet with Watkins, describe Martins' encounter with Billy Dale. Thomason calls Martins' Cincinnati office and has memo faxed to White House. Thomason makes copies for David Watkins, Katherine Cornelius and himself.

And isn't it a fact, Ms. Thomasson, that before the firing of the Travel Office workers during the week of May 17th, a decision had already been made the previous week as to who was going to come in and substitute for them?

Ms. THOMASSON. Not to my knowledge, sir.

Mr. CHERTOFF. Isn't it a fact that the previous week you personally had conversations with people at the White House in which you raised questions about whether it was appropriate to bring people in without a bidding procedure?

Ms. THOMASSON. I raised the issues about bidding procedures and how we would go through that, if that was the determination about how we would proceed with the White House Travel Office as other Government agencies do their travel.

Mr. CHERTOFF. It is important to keep the weeks in sequence. It is the week of, I guess, May 17th that the firing occurs. Your testimony is that the selection of the new replacements does not come until after the firing. Isn't it a fact that the week before the firing, on Friday, Mr. Watkins had a conversation with the First Lady in which the First Lady told Mr. Watkins that Harry Thomason had selected people to come in to run the Travel Office, World Wide Travel and Penny Sample, and that those people could be put in place immediately after the dismissals?

Ms. THOMASSON. I don't know what the conversation was between Mr. Watkins and the First Lady. I have no idea about that.

Mr. CHERTOFF. And isn't it a fact that on Monday morning of the following week, again before the people at the Travel Office were terminated, you had a conversation with Mr. McLarty and Mr. Watkins in which Mr. McLarty discussed with you that this issue of replacing the employees with the World Wide Travel personnel was on the First Lady's "radar screen"?

Ms. THOMASSON. I don't recall that in the discussion, but it certainly could have happened. I don't recall it though.

Mr. CHERTOFF. Again, let me take you back to the draft of Mr. Watkins' memo which you reviewed, and let me ask you to focus your attention on the second page. I want to read this to you.

Foster regularly informed me that the First Lady was concerned and desired action—the action desired was the firing of the Travel Office staff. On Friday, while I was in Memphis, Foster told me that it was important that I speak directly with the First Lady that day. I called her that evening and she conveyed to me in clear terms that her desire was for swift and clear action to resolve the situation. She mentioned that Thomason [Harry Thomason] had explained how the Travel Office could be run after removing the current staff—that plan included bringing in World Wide Travel and Penny Sample to handle the basic travel functions, the actual actions taken post-dismissal, and in light of that, she thought immediate action was in order.

On Monday morning, you came to my office and met with me and Patsy Thomasson. At that meeting you explained that this was on the First Lady's "radar screen." The message you conveyed to me was clear: Immediate action must be taken. I explained to you that I had decided to terminate the Travel Office employees, and you expressed relief that we were finally going to take action (to resolve the situation in conformity with the First Lady's wishes). We both knew that there would be hell to pay if, after our failure in the Secret Service situation earlier, we failed to take swift and decisive action in conformity with the First Lady's wishes. You then approved the decision to terminate the Travel Office staff, and I indicated I would send you a memorandum outlining the decision and plan, which I did.

Now this memorandum indicates that you were personally present at this meeting on Monday morning, before the Travel Office staff was fired, in which there was discussion about the plan to replace them with World Wide Travel and that this was on the First Lady's "radar screen." Your testimony is you don't remember this meeting?

Ms. THOMASSON. No, my testimony is that I don't remember that part of the conversation of the meeting. At that meeting Mr. Watkins had asked me what my opinion was with regard to firing the Travel Office. And my opinion at that time had changed because the Peat, Marwick people had been there all weekend and they had made it very plain, very clear for me to see that the Travel Office was not being run under normal operating procedures that any small business would be asked to do.

I didn't see any way to correct those errors without replacing the White House Travel Office. Mr. Watkins asked me my opinion with regard to that, I gave him my opinion, and I told him that I agreed that we should fire the White House Travel Office.

Mr. CHERTOFF. My question to you is this, Ms. Thomasson. Wasn't the selection of the people who were going to take over made before there was a decision to fire the people who were the current incumbents? Didn't you know that fact because it was clear to you, at the very least, as of that meeting Monday morning?

Ms. THOMASSON. I knew on Monday morning, if we were going to fire the White House Travel Office, we had to have replacements and that they had to be there quickly, they needed to be there the next day.

Mr. CHERTOFF. You knew who the replacements were?

Ms. THOMASSON. I knew who we were talking about. I didn't know they would be selected that morning. I knew that morning who we were considering, yes.

Mr. CHERTOFF. So when you told us in response to the question that I asked you last year at this point in time was there a substitute for the company or agency that was handling the money, and you said not at that point.

Ms. THOMASSON. There was not a decision made at that point, Mr. Chertoff, on who it would be or if it would in fact be them. There was a consideration being given to that particular company but we had to determine, through the purchasing people and the procurement people in our agency, whether or not we could in fact hire them.

Mr. CHERTOFF. You then went on to say:

Question: Did there come a point when there was a change?

Answer: Yes, there was.

Question: When was that?

Answer: It was the next week after the members of the Travel Office had been terminated. We had a firm that volunteered to come in and help us get through some period of time.

My point, Ms. Thomasson, is that it was not that the decision was made to fire the people and then a new group came in to volunteer to take over. My point is, wasn't the reality that a decision was made and there was a group that wanted to come in and take over? It was afterwards that a decision was made to fire the incumbents in the office?

Ms. THOMASSON. That's not correct, Mr. Chertoff.

Mr. CHERTOFF. That's not the way you remember it?

Ms. THOMASSON. That's not the way I remember it.

Mr. CHERTOFF. In the paragraphs I have read to you from Mr. Watkins' draft, you don't recognize the handwriting on page 2? You don't recognize it to be your handwriting?

Ms. THOMASSON. It could be mine but I don't recognize it as mine.

Mr. CHERTOFF. What is clear is there's no writing on this, particularly next to the description of your meeting with Mr. McLarty and Mr. Watkins. There is no notation by you that this is incorrect or at variance with your memory as to how it was when you reviewed this in the fall 1993; right?

Ms. THOMASSON. There are a lot of things that are incorrect in this memorandum. I didn't correct anything in this memorandum.

Mr. CHERTOFF. You did make notations. My question is this—

Ms. THOMASSON. They were not corrective notations. They were only additions or comments with regard to other aspects of the situation.

The CHAIRMAN. One last question because we're over the time.

Mr. CHERTOFF. My question to you is simply this: In the fall of 1993, within 6 months of the time of these events, you had this memorandum, you reviewed it, and you made certain marginal notations or additions where you felt it was appropriate. There's no notation, no dispute, no contradiction, nothing you have entered with respect to this description of a meeting you personally participated in that in any way contradicts or takes issue with the rendition of events in this memorandum; isn't that correct?

Ms. THOMASSON. That was not my assignment. I was only assigned to read it, I was asked to read it; I read it, I gave him my comments.

Mr. CHERTOFF. And no comments are there——

Ms. THOMASSON. I didn't give him very many written comments, as you will see.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Thomasson, in order for this questioning about Travelgate not to be a disingenuous pretext to exceed the scope of our Resolution by going into Travelgate because the tank is empty of material we are authorized to cover, one would expect a cogent theory of getting into this material that has some relationship to the investigation of materials in Mr. Foster's office, looking for a note following his suicide on July 20, 1993.

Now the theory would have to be that you were concerned about Travelgate and went into Mr. Foster's office to search for, find, carry off, destroy, mutilate, spindle, and otherwise make unavailable any material on the Travel Office.

So now what do we have? We have, in fact, Mr. Foster's spiral notebook found in his briefcase. When Mr. Chertoff held it up and you heard all those cameras clicking—as you will again, this is called a photo opportunity—you hold this up and you say here is a thick spiral notebook full of Mr. Foster's jottings on the Travelgate, or the Travel Office matter. In fact, as you would know if you went through the document, in this thick spiral notebook, which is a photocopy of all of the pages in a spiral notebook, there are exactly 20 pages that have some writing on them. So that's the particular spiral notebook.

As I recall your testimony before this Committee, you went into the office of Mr. Foster to look for a note, to see if there was a suicide note, on the night of his suicide; correct?

Senator SARBANES. Could I interrupt Counsel just for a minute? Because Mr. Chertoff held this up and talked about this spiral notebook. I wasn't aware of this, but I see that a great many of these pages are just blank. Is that the point?

Mr. BEN-VENISTE. Yes. There are only 20 pages that have any kind of writing on them.

Senator SARBANES. Out of all of these pages?

Mr. BEN-VENISTE. Right.

Senator SARBANES. Well, that certainly was not the impression that was left and it certainly was not the impression I had, so I am glad that point has been made because it clarified this matter.

Mr. BEN-VENISTE. If I recall your testimony, in the course of searching for a note on that evening, and we've testified about it several times at length over hundreds of pages of transcript, one of the places that you looked was in Mr. Foster's briefcase. According to your testimony, you opened the briefcase and you looked inside to see if there was a note lying in plain view in the briefcase; is that correct?

Ms. THOMASSON. Yes.

Mr. BEN-VENISTE. That is the very place where this Travel Office notebook was located, and we know that because when the inventory was conducted in the presence of all of the three-letter agen-

cies, the Department of Justice and everyone else, according to the notes that were taken of that inventory, the Travel Office matter—and let me find the document itself, because we have that.

On July 27, 1995, in our hearing, Exhibit 1 was the notes made by Mr. Spafford during the review of materials in the office. Among the things which were called out by Mr. Nussbaum was a “notebook of notes of meetings,” and then under that, “WH Travel Office management” and it appears to be either a file or a word that looks like that.

So immediately after Mr. Foster’s death, in the presence of the Department of Justice, FBI, and Park Service officials, the notebook with Travel Office material was identified. That is the very notebook which should have been, if there is a theory or a nexus as to why we are having this hearing, that is legitimately within the scope of our Resolution, that should have been your objective, to hone in on that and I guess do something untoward, get rid of it, doctor it up, somehow destroy it. Did that happen?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. In all of the 40 minutes that Mr. Chertoff was questioning here—I guess that didn’t allow him the time to ask you a direct question—was your intent to go in the office of Mr. Foster after his suicide to look for notes relating to the Travel Office?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Did you, on that evening, review any material that had to do with the Travel Office?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Was the Travel Office a matter that concerned you and was it the reason why you went to Mr. Foster’s office that evening?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Will you tell us—for the hundredth time—why you went into the office that evening?

Ms. THOMASSON. I was asked to go to the office that evening to see if I could find a suicide note to determine whether or not Mr. Foster left a suicide note. We wanted his wife and his children to be the first ones to know the contents, if there was such a note.

Mr. BEN-VENISTE. Who asked you to go there?

Ms. THOMASSON. Mr. Watkins asked me to go there.

Mr. BEN-VENISTE. What was your reporting relationship with Mr. Watkins at that time?

Ms. THOMASSON. He was my direct supervisor.

Mr. BEN-VENISTE. Do you recall where Mr. Watkins was when he asked you to go and look for a note at that time?

Ms. THOMASSON. He was at Vince Foster’s home.

Mr. BEN-VENISTE. Our evidence has been there was a question as to whether a note was left by Mr. Foster in his home. They looked for a note there and they did not discover one. According to my recollection of the testimony, Mr. Watkins indicated that he had spoken with Mrs. Foster about the issue of whether a note had been left, and thereafter had called you and asked you to go in and see if he had left a note in his office. Now, we have had days of testimony regarding what occurred that night from Mr. Nussbaum from you, from Ms. Williams, and from others. I don’t intend to spend the Committee’s time regurgitating, reiterating, and recy

clinging all that information. We have a complete record of it, and I presume it will be the subject of a section in the final report.

Is there anything that has come to your attention that would have a bearing on the testimony you gave previously. Some material that would clarify, elucidate, or correct anything to do with the reasons why you went into the office, or what you did when you were there that night?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. How many different agencies have you given your testimony or statements to with respect to this matter?

Ms. THOMASSON. The Park Police, the FBI, this Committee, the House Committee on Travel, this Committee more than one time.

Mr. BEN-VENISTE. I only count it once.

Ms. THOMASSON. OK. I think that's it.

Mr. BEN-VENISTE. Independent Counsel?

Ms. THOMASSON. Absolutely, Independent Counsel.

Mr. BEN-VENISTE. I wouldn't think they would be neglectful of you in that regard. So that's five different investigatory agencies. Do you have any idea of how much time you have spent testifying and preparing for testimony?

Ms. THOMASSON. I have no idea. It's an enormous amount of time, to get ready each time that one has to do this.

Mr. BEN-VENISTE. Because when you come up here, you don't know what questions will be asked about what subject. You have to go back so you can play this cat-and-mouse game about "gotcha" in some testimony you may have given 2 years ago on an unrelated subject. You have to go back and try to review all of that testimony on every subject in order to prepare adequately to come here to defend yourself, as it were, before this Committee.

I have to say that as a trial lawyer, and understanding what it takes for a witness to prepare adequately under such circumstances, it's a tremendous obligation, and it's a stressful kind of undertaking. I am very sympathetic to the witnesses who have been called, recalled, recalled again, and have testified in this way. I have to say that this Travel Office material was produced in January of this year. You were again deposed in February of this year; is that correct?

Ms. THOMASSON. That's correct.

Mr. BEN-VENISTE. A month after the memo you have been questioned about was produced, you were not asked a single question by the Majority in your deposition about the subject?

Ms. THOMASSON. That's correct.

Mr. BEN-VENISTE. That to me underlines the fact that this is well outside the scope of this Committee's jurisdiction, to get into the details of the Travel Office as has been done here this morning—and that the pretextual reason this would somehow provide a nexus between your search for a note on July 20, 1993, is strained at best. I have nothing further.

Mr. CHERTOFF. Well, in light of that—

Senator SARBANES. I want to withhold our time for a moment.

Mr. BEN-VENISTE. Let me ask you some other questions and maybe we can save some time by covering them more quickly from the Minority side. Now with respect to the Rose Law Firm billing

records, did you ever see those billing records, in Mr. Foster's office, on any occasion?

Ms. THOMASSON. I don't recall seeing those records until my deposition.

Mr. BEN-VENISTE. I take it the Rose Law Firm billing records was not a motivator for you on the night of July 20, 1993, in going into Vince Foster's office?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. And there was no discussion among you, Mr. Watkins, Judge Johnson, or any other characters who have been woven into this intricate conspiracy theory? The billing records, these highly and supposedly relevant and incriminating billing records, were the subject of any discussion about going into Vince Foster's office after his suicide?

Ms. THOMASSON. No, they were not.

Mr. BEN-VENISTE. Let me, if I can, go to the actual statement, because Mr. Chertoff paraphrased it in a way that, in fairness to you, might have made a jump—and I have to say here if America ever fields a conclusion-jumping team for the next Olympics, we're going to be in very good shape with the Majority staff. On page 33, you were asked:

Question: And what in particular was the work that you did in connection with that [the Travel Office review]?

Answer: In connection with that, the White House staff in the Office of Management and Administration had been reviewing every office under its purview to make sure its operations were what we wanted them to be and to make sure they operated in a manner that we thought was effective for the Clinton Administration.

One of the offices we had not done was the White House Travel Office and we were working to evaluate the White House Travel Office and its function and its ability to function. When we got to that particular office, it was so different than every other office that we had looked at because we'd already looked at the Office of Administration and we'd looked at various offices within the White House, but the White House Travel Office was the only one that handled cash every day. None of the other offices handled cash on a daily basis because of the nature of their work.

We didn't have on staff at the White House accountants, numbers guys, bean counters, auditor types. And as a result of that, we opted to hire someone from the outside to come in to help with that particular part of the review of the Travel Office. We felt we had the talent and capability in-house to look at the management side and how the office was being managed, but we didn't have in-house talent to review the numbers and to do an audit of the dollars and cents that were there.

We talked among David Watkins and Vince and myself, and we agreed that it would be a better idea to get someone from the outside than someone from the inside who might not be as credible, who might have done the work fine but might not be as credible because they didn't have a CPA behind their name, so we would hire an outside firm.

Is that what you testified to?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. Mr. Chairman, we're going to yield back our time in order to move this along but I just want to make one observation. Obviously, we're going to have to deconstruct the photo opportunities, I guess, over the next few weeks.

At the outset of this hearing, Mr. Chertoff held up this document and unfortunately all the photographers have gone now, and waved it around and so forth these notes of Watkins. This was the document that was held up. These are the pages, these few pages, 21 of them, that have any writing on them at all. Now these are the pages that have no writing on them. There are 88 pages with no writing and 21 pages with writing, so as I understand it, 80 per-

cent of these had no writing on them. I just make that observation for the record.

With respect to the documents that were shown, another indication of what we're talking about here is that this Committee never subpoenaed those records from the White House. These were records that were turned over to the House of Representatives by the White House because they are looking into Travelgate. All of the documents that were displayed and about which this witness was questioned were documents that this Committee has received, not pursuant to process or request but over the transom, as it were, from the House.

We yield back whatever time we have.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Just to be clear on this, it's 20 or 22 pages of closely written notes in Mr. Foster's own handwriting. These notes detail in exquisite, painstaking detail all of his activities and discussions in connection with this matter, including discussions with you.

For example, and I want to tie it directly to your prior testimony. Ms. Thomasson, it's my understanding, that this document was not turned over to any investigative authority, until more than a year after Mr. Foster's death.

Mr. BEN-VENISTE. Mr. Chairman, may I make a point here? When the inference is made that this document was hidden and not turned over, that's a far cry from what actually happened, according to the testimony that we have had. The document was identified in the presence of the investigators on July 22nd, I believe. The investigators stated that any document that they wished to have reviewed would be segregated, put in a stack, and Mr. Nussbaum would review that material. After reviewing it, he would make a decision about whether to turn it over or not.

That document removed from the briefcase and identified as Travel Office material, notebook containing Travel Office inquiry material, was never requested at that time. I think that, in fairness, it should be said when we talk about material that was not turned over for a year.

The CHAIRMAN. I think that's a very fair observation. The Chair would make an observation as well, and I don't want it to be point and counterpoint. Given the note that was turned over in which obviously Mr. Foster expressed his concern over a number of matters, including the travel situation, I think it goes to the heart of how and why the search of the office should have been and would have been better handled by the Justice Department, as opposed to the manner in which it did take place. The note would have been found then, and the relevance if any as it related to the notebook would have been put forth. We wouldn't have had the conjecture as to why this was not made available.

But I think your observations, they will stand as you have made them and we will continue.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Mr. CHERTOFF. I just want to put forth on the record that I asked for a copy, from the Minority, of Mr. Spafford's handwritten list of things in the briefcase and there was a reference to a Travel Office management role report. Ms. Thomasson, there was a Podesta re-

port in early July on the management issues raised by the White House Travel Office; right?

Ms. THOMASSON. There was such a thing, yes.

Mr. CHERTOFF. And that typed report, that management review, is what was proclaimed in front of all the law enforcement authorities as being the content of the briefcase. The notebook was simply described in Mr. Spafford's notes as "notebook of notes of meetings, GC issues." So we're not confused, the reference in the presence of investigators to White House Travel Office management role relates to the typed Podesta report, which I acknowledge was made public rather swiftly. But, my understanding of the record is that the notebook was not described in any way that would make it clear that it was part of the Travel Office matter. And that it was to the intense surprise of Mr. Shaheen, the career official in charge of the Office of Professional Responsibility, when he learned in 1994 that he had conducted his own investigation of this matter without the benefit of this notebook.

My question to you is this, Ms. Thomasson: You were asked in your deposition—and this goes directly to the issue of your prior relationship with Mr. Foster, that you worked on——

The CHAIRMAN. What page?

Mr. CHERTOFF. This is page 38. We asked you without objection on line 15, after you had identified World Wide Travel correctly as the company that came in after the Travel Office individuals were fired:

Question: Was there anybody in particular who volunteered the firm to handle the travel?

Answer: I don't know the answer to that.

But isn't it a fact, Ms. Thomasson, that you did know that it was Harry Thomason—again no relation to you, and I want to be clear about that—who was responsible for volunteering World Wide Travel and the air charter group individual, whose name is Penny Sample?

Ms. THOMASSON. I think if you go back to page 37, we—there were questions with regard to who that was, and I say, at line 21 on page 37:

Answer: It was the week after the members of the Travel Office had been terminated.

Question: What was the firm?

Answer: Slips my mind. World Wide Travel

Question: Where was the firm located?

Answer: Little Rock.

I think where you are quoting from is after that, but yes, I identified World Wide Travel in that deposition.

Mr. CHERTOFF. I asked you, following up, was there anybody in particular who volunteered the firm for travel—you don't know Harry Thomason was involved in volunteering World Wide Travel and Penny Sample to handle this matter?

Ms. THOMASSON. I didn't know the answer to that.

Mr. CHERTOFF. I think we gave you some copies of excerpts of Mr. Foster's notebook. There's one page before you that may be cut off, it's F 15, it's ruled paper with handwritten notes. It has a little circle 24 in the upper left-hand corner.

Senator SARBANES. This is F 15?

Mr. CHERTOFF. F 14 and F 15. We gave you the selected pages. It has a little 24 with a circle in the margin in the upper left-hand corner. You may want to look at the screen to help you compare. Do you have that?

Mr. BEN-VENISTE. I couldn't read that screen when I was back in the fifth grade and had good eyesight.

Mr. CHERTOFF. I think Ms. Thomasson has the document now. This is part of Mr. Foster's description of the events of Thursday, May 13th, in this notebook, in the briefcase, in his office at the time of his death. It says, "HT," that would be Harry Thomason, "understands they can switch over immediately." The next item, "Tell PT," that's you, "same on Eller. Pass on HT comment while noting not our role, ask her to have DW call. PT unsure of ability to sub without procurement."

Does this change your recollection of the fact that you were aware before World Wide Travel was brought on that it was Harry Thomason who was recommending them for the job?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Finally, let me turn to page 40 of your deposition. The question really boils down to why it was that Mr. Watkins chose to suggest that you travel from the restaurant in Georgetown to the White House to do this examination of Mr. Foster's office when there was a White House full of people who Mr. Watkins could have asked to go into the office. And you were asked the following questions at line 13:

Question: Did there come a point in time when there was a certain amount of controversy concerning the fact that the FBI had been called in on this issue with the Travel Office?

Answer: I read that in the paper, yes, sir.

Question: Was there discussion in the White House about the controversy?

Answer: There was not discussion—there was not controversy that I was in conversations with that discussed that controversy, no.

So your testimony was that before Mr. Foster's death, there was no discussion in the White House about any controversy concerning Travelgate. It was simply not a matter that was the subject of concern to anybody in the White House. That was your testimony then. Is it still your recollection that before Mr. Foster's death, there was no controversy, no discussion in the White House about a controversial problem with the Travel Office firings?

Ms. THOMASSON. My answer was then, and it continues to be, that I was not involved in conversations with regard to the controversy with regard to the FBI.

Mr. CHERTOFF. Mr. Watkins never discussed this with you, never discussed with you the fact that he was upset about the Podesta report in early July that had caused him to be reprimanded?

Ms. THOMASSON. Mr. Watkins and I did not discuss that that I recall. I don't recall talking about that.

Mr. CHERTOFF. You were unaware that Mr. Foster was upset about the criticism of his handling of the Travel Office matter based on that initial review by the Podesta team?

Ms. THOMASSON. I was not aware what Mr. Foster's state of mind was with regard to the White House Travel Office.

Mr. CHERTOFF. And to be perfectly clear on this, in the period in May, 2 months before Mr. Foster's death, you worked regularly with Mr. Watkins, Mr. Kennedy, Mr. Foster and others who were

involved in the decision to fire the Travel Office personnel and replace them; right?

Ms. THOMASSON. I did.

Mr. CHERTOFF. You were involved in the discussions concerning whether to bring in the FBI; right?

Ms. THOMASSON. I was not.

Mr. CHERTOFF. You were involved in discussions about bringing in the auditors; right?

Ms. THOMASSON. I was.

Mr. CHERTOFF. You were involved in discussion about the fact that the President and the First Lady, themselves, personally, had communicated their desire to have this transition take place; right?

Ms. THOMASSON. I don't have any recollection of having any discussion about whether the President was interested in having this happen.

Mr. CHERTOFF. Take the President out. What about the First Lady?

Ms. THOMASSON. I don't specifically recall discussions with regard to the First Lady.

Mr. CHERTOFF. Do you generally recall on Thursday, May 13th, you had a discussion with Mr. McLarty and Mr. Watkins in which there were observations about the First Lady wanting to have this transition speeded up?

Ms. THOMASSON. I don't remember the specifics of that conversation.

Mr. CHERTOFF. Do you remember a conversation you had with Mr. Foster, Mr. Watkins, and Mr. McLarty in which Mr. McLarty approved the idea of doing this outside audit review on Thursday, May 13th?

Ms. THOMASSON. I do.

Mr. CHERTOFF. Isn't it a fact that, at that particular meeting, Mr. Foster referred to the clients as being concerned about the White House Travel Office matter?

Ms. THOMASSON. I don't recall that.

Mr. CHERTOFF. Have you ever told anybody that, at this meeting, Mr. Foster referred to the clients as being concerned about the White House Travel Office matter?

Ms. THOMASSON. I don't recall having done that.

Mr. CHERTOFF. Did Mr. Watkins ever refer in your presence to the Clintons, either of them, as the clients?

Ms. THOMASSON. On occasion.

Mr. CHERTOFF. That was a term he would use?

Ms. THOMASSON. On occasion.

Mr. CHERTOFF. I want to ask you whether you were aware, before Mr. Foster's death, that Mr. Foster had had conversations with the First Lady about the Travel Office matter.

Ms. THOMASSON. I don't know that I was aware of it.

Mr. CHERTOFF. Finally, I want to direct your attention back to the memorandum from Mr. Watkins, the draft memorandum that you saw. I want to direct your attention in particular to page CGE 12290. Do you have that?

Ms. THOMASSON. Yes.

Mr. CHERTOFF. This relates to the portion of your deposition before this Committee where you were asked about the sequence and

who was involved in the decision to substitute World Wide Travel for the Travel Office employees.

Now this page is Mr. Watkins' response to criticism from Mr. Podesta's internal review that hiring World Wide Travel on a no-bid basis created the appearance of favoritism. There are several paragraphs of Mr. Watkins' response. There's a handwritten notation in the left-hand corner. Whose handwriting is that?

Ms. THOMASSON. It's mine.

Mr. CHERTOFF. What does it say?

Ms. THOMASSON. "GSA contract in Atlanta."

Mr. CHERTOFF. Why did you add that notation to the discussion that Mr. Watkins had about his previous relationships with World Wide Travel?

Ms. THOMASSON. World Wide Travel had a Government contract with someone in Atlanta, with GSA.

Mr. CHERTOFF. How did you know that?

Ms. THOMASSON. How did I know that? I don't recall how I knew that, but I knew that.

Mr. CHERTOFF. Did you know that from World Wide Travel?

Ms. THOMASSON. I don't recall how I knew that.

Mr. CHERTOFF. Did you work with the people from World Wide Travel, when you reviewed this draft report, to get additional information so you could supplement Mr. Watkins' memorandum?

Ms. THOMASSON. I did not.

Mr. CHERTOFF. Did you check with GSA or with someone in the White House to get this information about World Wide having a GSA contract in Atlanta?

Ms. THOMASSON. I did not.

Mr. CHERTOFF. You will at least agree that you did some independent, outside research to come up with this notion or this fact that there was a GSA contract in Atlanta for World Wide Travel; isn't that correct?

Ms. THOMASSON. I knew at some point during the summer or fall of 1993 that World Wide Travel had a GSA contract in Atlanta.

Mr. CHERTOFF. Now, Ms. Thomasson, I would like to turn your attention back to the period of time you worked with Mr. Lasater. How long did you work with Mr. Lasater?

Ms. THOMASSON. From 1983 until 1992, mid-1992.

Mr. CHERTOFF. What was your position?

Ms. THOMASSON. I had several different positions with Mr. Lasater and Mr. Lasater's firms.

Mr. CHERTOFF. Tell us about them.

Ms. THOMASSON. I was the President of LFI Corporation at one time which was a corporation owned by Mr. Lasater. I was President of Lasater, Inc. at one time, a company owned by Mr. Lasater. I held various other jobs in Mr. Lasater's companies.

Mr. CHERTOFF. Were you involved at all with work that was done, either the preparation for the work or the actual work that was done, in connection with a contract for the Arkansas Development Housing Authority?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. No involvement at all?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did you have conferences or meetings about it?

Ms. THOMASSON. I don't recall having any conferences or meetings about it.

Mr. CHERTOFF. Was it an area of activity that would have been within the scope of your responsibility?

Ms. THOMASSON. It was not.

Mr. CHERTOFF. I want to show you a bill from the Mitchell, Williams, Selig, Jackson & Tucker firm, the firm in which, formerly, current Governor Jim Guy Tucker was a partner. Direct your attention to the pages that are marked with little Arabic numerals on the lower right-hand corners, 81 and 84.

The CHAIRMAN. At this point, because the red light has gone on, why don't we turn to Senator Sarbanes. They may want to have an opportunity to go over the areas that you've completed. This is a whole new area, and this way we will not be impinging upon our colleagues on the other side.

Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Ms. Thomasson, when David Watkins called you on the evening of the death of Vince Foster, he did not order you to go to Foster's office, did he?

Ms. THOMASSON. No, sir.

Senator SARBANES. I take it you were distressed by the news. As I understand your testimony earlier, you said was there anything you could do to help; is that correct?

Ms. THOMASSON. That's correct.

Senator SARBANES. And he indicated to you maybe you could see if there was a suicide note?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. Is that why you went to Foster's office, to see if you could find a suicide note?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. You were at dinner, as I recall your previous testimony?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. When you left your dinner companions and headed to the White House to go to Foster's office, the only purpose in your mind was to find a suicide note?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. You weren't looking for something else?

Ms. THOMASSON. No, sir.

Senator SARBANES. When you got to Foster's office and looked for the suicide note, is that the only thing that remained in your mind that you were there for?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. While you were there, you didn't start looking for others things as well, did you?

Ms. THOMASSON. No, sir.

Senator SARBANES. Your whole focus was on the suicide note?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. That's what took you to Foster's office, and that was what you sought to do during the period of time you were there; is that correct?

Ms. THOMASSON. That's correct, sir.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. First of all, let me say that the schedule of what was found in the briefcase, in Mr. Foster's office, his personal briefcase, is set out in a document which we identified last summer before this Committee. There is no question that in the briefcase there was a "notebook of notes of meetings," and there was a "White House Travel Office management role" materials. In addition to that—and this is what is pretty interesting about how we come, a year later, to focus on this, as a potential motive—when Mr. Watkins gave his deposition to us on July 25, 1995, at page 66, he was questioned—actually this was in open hearing, on July 25, 1995, so that's 10 months or so ago.

He was asked as to what the conversation was in the car when he was riding to the Fosters' home to do the notification, an unpleasant job. He was riding with Officers Rolla and Braun of the Park Police, and Senator Dodd asked the question:

Senator DODD. Who was driving the car, Mr. Watkins?

Mr. WATKINS. I think Investigator Braun was driving.

Senator DODD. But were you asking more questions of them or were they asking more questions of you, just as a general—

Mr. WATKINS. As a general, I don't know. I don't know which way it was. I told them about the Travel Office—

I told them about the Travel Office.

—and he [Vincent Foster] said that he had been upset about the Travel Office as we all were. I was concerned at the time—I asked them about the fact, I asked, who notifies the family?

The one item that Mr. Watkins specifically identified to the Park Police as something on Mr. Foster's mind that had burdened him, was the Travel Office. Then, a couple of days later, in the presence of Park Police again, the contents of Mr. Foster's briefcase were removed and the materials relating to the Travel Office identified. And I say again that those materials were not requested to be segregated or reviewed.

Now, we had the Travel Office notebook, and we had access to it before the very first time you were deposed by this Committee. It was so remote, and so clearly not an issue, that you weren't asked any questions about it during your first deposition, during your testimony, in open session before this Committee, or in your second deposition before this Committee.

Mr. Kravitz.

Mr. KRAVITZ. Thank you, Mr. Ben-Veniste.

Good morning, Ms. Thomasson. I would like to direct your attention back about 13 years, to about 1983. Was that the year in which you first began working for Dan Lasater?

Ms. THOMASSON. Yes, it is.

Mr. KRAVITZ. And what was your position with Mr. Lasater at that time?

Ms. THOMASSON. I was a troubleshooter, Mr. Kravitz. I took on whatever job was there to be done on a given day, and that might be anything from planning events to reviewing financial statements.

Mr. KRAVITZ. What was the name of Mr. Lasater's company you were employed by in June 1983?

Ms. THOMASSON. From June 1983 until November 1983, I was employed by Collins, Locke & Lasater, Inc., which later became Lasater & Company.

Mr. KRAVITZ. That was Mr. Lasater's securities firm?

Ms. THOMASSON. It was.

Mr. KRAVITZ. Was their principal focus when you were employed in 1983 at Collins, Locke & Lasater, did it have anything to do with obtaining State bond contracts for the firm?

Ms. THOMASSON. No, sir.

Mr. KRAVITZ. Where did you go to work in November 1983 when you left Mr. Lasater's security firm?

Ms. THOMASSON. I went to work for Mr. Lasater personally.

Mr. KRAVITZ. What was your role, working for Mr. Lasater, personally after November 1983?

Ms. THOMASSON. Mr. Lasater had a number of holdings including horse farms, thoroughbred horses, real estate, both commercial and domestic real estate, and I managed all those assets for him.

Mr. KRAVITZ. How long did you work for Mr. Lasater personally after you began in November 1983?

Ms. THOMASSON. In the spring of 1984, I switched over to a company payroll called LFI, which was Lasater Farms, Incorporated, which was owned by Mr. Lasater's children. My duties remained approximately the same.

Mr. KRAVITZ. In any of those roles or those positions, was one of your major functions obtaining State bond business for Lasater's securities firm?

Ms. THOMASSON. No, sir.

Mr. KRAVITZ. Did you also hold any State government positions in the 1980's?

Ms. THOMASSON. I did.

Mr. KRAVITZ. What positions were those?

Ms. THOMASSON. I was on the State Highway Commission in Arkansas from 1977 until 1987.

Mr. KRAVITZ. Who appointed you to that position?

Ms. THOMASSON. Senator David Pryor, who was then the Governor.

Mr. KRAVITZ. Was that a 10-year term?

Ms. THOMASSON. It was one 10-year term.

Mr. KRAVITZ. As a result of your being on the State Highway Commission, did you have contacts with either Governor Clinton or any members of his staff?

Ms. THOMASSON. Yes, I did.

Mr. KRAVITZ. Those contacts occurred during the time, I take it, when you were working for Mr. Lasater?

Ms. THOMASSON. Yes.

Mr. KRAVITZ. During any of the contacts that you had with Governor Clinton and/or members of his staff, as a Member of the Highway Commission, did you ever discuss the question of State bond contracts for Mr. Lasater's securities firm?

Ms. THOMASSON. I don't think I ever did that. I don't have any recollection of ever doing that, Mr. Kravitz.

Mr. KRAVITZ. Did you ever discuss that subject with the Governor himself?

Ms. THOMASSON. No recollection about having a conversation about that with the Governor.

Mr. KRAVITZ. Did you ever discuss the subject of bond underwriting contracts for Mr. Lasater's securities firm with Betsey Wright?

Ms. THOMASSON. I have no recollection of that, sir.

Mr. KRAVITZ. With Mr. Nash?

Ms. THOMASSON. No, I did not.

Mr. KRAVITZ. And as far as you are aware, do you know of any political pressures that were brought to bear on any State agencies during the 1980's while Mr. Clinton was Governor of Arkansas. Pressure to steer the State bond underwriting contracts to Mr. Lasater's securities firms?

Ms. THOMASSON. Not that I am aware of.

Mr. KRAVITZ. During the 1986 Gubernatorial Campaign in Arkansas, did you read allegations of that happening?

Ms. THOMASSON. There were numerous allegations with regard to that during the 1986 campaign. Later the Arkansas Gazette, which is now not in business, ran a story that reflected the actual truth about the matter, and showed exactly how much money had gone to every agency in Arkansas.

Mr. KRAVITZ. But other than these articles that contained allegations, which apparently you later learned were totally unsubstantiated, you did not hear anything that led you to believe that any influence peddling had occurred regarding State bond underwriting contracts?

Ms. THOMASSON. That's true.

Mr. KRAVITZ. That's all I have. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Before we resume with the bill, just to pick up on something I think you were asked about earlier, had you, before Mr. Foster's death, ever been involved in obtaining or deleting records from the Travel Office computers relating to the whole issue of the conduct of the Travel Office?

Ms. THOMASSON. I was involved in getting every record on the Travel Office computer copied, both into hard copy form and onto disk, so that it would be preserved for posterity.

Mr. CHERTOFF. So you were involved in directing people? This would have been in May 1993?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. You were involved in directing people to remove—was this something called the hard drive removal process?

Ms. THOMASSON. I asked the Information Systems and Technology Department in the Office of Administrations to do whatever was necessary to preserve the information in the computers.

Mr. CHERTOFF. Where was that information; where were the disks that were created kept?

Ms. THOMASSON. I have no idea.

Mr. CHERTOFF. Were you the person who supervised the process or directed others and then told them what to do with the product of this removal?

Ms. THOMASSON. There were two hard copies of the information that were produced, as a result of the directions that I gave to the Information Systems and Technology to preserve the information. They provided one copy to the White House Travel Office, they provided a copy to me which I put in the safe in the East Wing of the White House.

Mr. CHERTOFF. So you personally did that?

Ms. THOMASSON. No, I gave it to somebody else who took it to the safe.

Mr. CHERTOFF. Going back to this bill of Mr. Tucker's firm, it indicates—this is pages 81 and 84, if you look at the little Arabic numeral on the bottom—it says, "January 13, Telephone conference with Patsy Thomasson." Then on January 28th it indicates that a lawyer from the firm had a "Conference with Thomasson, Moudy and Drake." Do you know who Moudy and Drake were?

Ms. THOMASSON. Moudy and Drake, yes.

Mr. CHERTOFF. Who were Moudy and Drake?

Ms. THOMASSON. They both worked for the investment banking firm.

Mr. CHERTOFF. Does this refresh your memory that, in fact, you did have involvement in discussions concerning the legislation that led to the ADHA—I'm sorry, led to the police radio contract?

Ms. THOMASSON. I have no recollection of being involved in any way.

Mr. CHERTOFF. Do you have any reason to think the firm would simply make up a nonexistent conversation with you about this police radio contract?

Ms. THOMASSON. They could have called me to see if I could find Mr. Lasater to be involved in something. I don't recall what the conversation was about.

Mr. CHERTOFF. I'm sorry?

Ms. THOMASSON. It says a telephone conversation. It doesn't—it says "to review litigation" but I don't recall them talking to me with regard to what the legislation was going to do.

Mr. CHERTOFF. The next entry, January 28, where it says, "Conference with Thomasson, Moudy and Drake," you think that was simply a request that you go get somebody?

Ms. THOMASSON. I don't have any idea. I don't recall.

Mr. CHERTOFF. When you were the Highway Commissioner, even putting aside your operations as a Highway Commissioner, did you have conversations with Governor Clinton about Mr. Lasater?

Ms. THOMASSON. I don't recall specific conversations, but I certainly could have had a conversation.

Mr. CHERTOFF. Did he ever ask you questions about Mr. Lasater?

Ms. THOMASSON. I don't recall him doing that, no.

Mr. CHERTOFF. You knew, of course, that Mr. Lasater had hired Mr. Clinton's brother?

Ms. THOMASSON. I did.

Mr. CHERTOFF. And that was at Mr. Clinton's request?

Ms. THOMASSON. I don't know whether that was at Mr. Clinton's request, or whether that was at Roger's request.

Mr. CHERTOFF. You knew it was a favor to Mr. Clinton, to Governor Clinton?

Ms. THOMASSON. I think it was a favor to Roger Clinton, to get him a job.

Mr. CHERTOFF. So your testimony here now is that it was not at the request of Governor Clinton that Roger Clinton was hired by Mr. Lasater?

Ms. THOMASSON. I don't recall whether it was a request of Governor Clinton or whether Roger Clinton made the request to work on the farm.

Mr. CHERTOFF. Didn't Mr. Lasater himself tell you that Governor Clinton made a request to have Roger Clinton given a job?

Ms. THOMASSON. I don't recall. He certainly could have done that.

Mr. CHERTOFF. Let me ask you to look at your deposition of February 23rd of this year, page 85, line 9:

Question: Did Governor Clinton make a request to Mr. Lasater during this time period to find Roger Clinton a job?

Answer: He asked him to put him to work, yes.

Question: How do you know that he asked him to put him to work?

Answer: Because Mr. Lasater told me he asked him to put him to work.

Question: When did he tell you that?

Answer: Sometime around the time he put him to work.

Question: Do you know when that was?

Answer: Sometime in 1982-1983.

Correct, were those your answers to the questions?

Ms. THOMASSON. Those are my answers to the questions.

Mr. CHERTOFF. It is also a fact that Mr. Lasater wound up lending money to Roger Clinton in the early 1980's; is that right?

Ms. THOMASSON. He did.

Mr. CHERTOFF. You wrote the check out for that; right?

Ms. THOMASSON. Yes I did.

Mr. CHERTOFF. And it was for an amount between \$5,000 and \$10,000?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Would it refresh your memory if I suggested it was for \$8,000?

Ms. THOMASSON. I just remember it was somewhere between \$5,000 and \$10,000. It certainly could have been \$8,000.

Mr. CHERTOFF. The check was for what?

Ms. THOMASSON. A loan to Roger Clinton.

Mr. CHERTOFF. For what purpose?

Ms. THOMASSON. I don't know.

Mr. CHERTOFF. You never found out?

Ms. THOMASSON. Mr. Lasater told me it was a loan to Roger Clinton.

Mr. CHERTOFF. You knew Roger Clinton?

Ms. THOMASSON. Yes.

Mr. CHERTOFF. Did Roger Clinton ever tell you why he needed the money?

Ms. THOMASSON. He didn't tell me why he needed the money.

Mr. CHERTOFF. You started to work for Mr. Lasater in 1983?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Did you get familiar with his business activities and his business operations?

Ms. THOMASSON. I did.

Mr. CHERTOFF. You socialized with him as well?

Ms. THOMASSON. On occasion.

Mr. CHERTOFF. You also knew a man by the name of Locke, George Locke?

Ms. THOMASSON. I did.

Mr. CHERTOFF. Who is George Locke?

Ms. THOMASSON. He was a State Senator from Arkansas and a friend of Mr. Lasater's.

Mr. CHERTOFF. And in fact, they had been in business together; is that right?

Ms. THOMASSON. Yes, they had. Collins, Locke & Lasater.

Mr. CHERTOFF. When did you become Highway Commissioner?

Ms. THOMASSON. 1977.

Mr. CHERTOFF. You remained in that position for how long?

Ms. THOMASSON. 10 years.

Mr. CHERTOFF. Did you take yourself out of any discussions about whether the Lasater Company would have any dealings with the Highway Commission?

Ms. THOMASSON. The Highway Commission didn't do bond issues.

Mr. CHERTOFF. There was no connection between Lasater and any activities of the Lasater Company and the Highway Commission?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. But, I assume you, as a Highway Commissioner, and a citizen, you obviously viewed yourself as having some responsibilities to the citizens of Arkansas in terms of making sure that they were getting good value for their money; right?

Ms. THOMASSON. The highway dollars, that was definitely my responsibility.

Mr. CHERTOFF. Were you familiar with an occasion when former State Senator Locke had a bankruptcy?

Ms. THOMASSON. Yes.

Mr. CHERTOFF. What was that bankruptcy about? What was the occasion? Was it that his business went bankrupt? Was it related to the investment company?

Mr. BEN-VENISTE. Mr. Chairman, are we going to get into another bankruptcy—

Mr. CHERTOFF. I think, Mr. Chairman, what we are going to get into is testimony about Mr. Lasater in a bankruptcy proceeding, which is pertinent to the question of his qualifications to be hired to do bond work for the State of Arkansas.

The CHAIRMAN. Go ahead.

Mr. CHERTOFF. Now do you remember what the bankruptcy was about?

Ms. THOMASSON. Mr. Locke's companies went bankrupt.

Mr. CHERTOFF. Did one of those include the investment banking firm he had in partnership with Mr. Lasater?

Ms. THOMASSON. No, it did not.

Mr. CHERTOFF. Was Mr. Lasater involved in helping Mr. Locke hide his assets from creditors?

Ms. THOMASSON. In my opinion, he was not.

Mr. CHERTOFF. And were you aware there was an issue raised about that?

Ms. THOMASSON. I was.

Mr. CHERTOFF. Where was that issue raised?

Ms. THOMASSON. In bankruptcy court.

Mr. CHERTOFF. It was raised in a trial or hearing at bankruptcy court in late 1984 and early 1985; is that correct?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. A Federal judge, a bankruptcy judge, actually made a determination, a finding that Mr. Lasater had been in-

volved in conspiring with Mr. Locke to hide his assets from creditors; is that right?

Ms. THOMASSON. I cannot quote what the judge found in that case, sir.

Mr. CHERTOFF. Does it ring a bell there was a judicial finding?

Ms. THOMASSON. There was a judicial finding, yes.

Mr. CHERTOFF. And there was also a judicial finding that Mr. Lasater's testimony, under oath, during that bankruptcy proceeding was not to be believed; right?

Ms. THOMASSON. Mr. Chertoff, you know that better than I do. I haven't reviewed any of this information.

Mr. CHERTOFF. You will certainly agree that at the time you were aware that there was a controversy about it, you were aware that Mr. Lasater testified, and you were aware that there was an adverse judicial finding, by a Federal judge, that was highly critical of Mr. Lasater; right?

Ms. THOMASSON. I was aware that there was an adverse judicial finding, yes.

Mr. CHERTOFF. In fact it was publicized in the press; right?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Did anybody from the State, to your knowledge, Mr. Clinton or anybody else, ever raise an issue about whether a person—a judge has accused of being involved in bankruptcy fraud is fit to be a vendor for contracts involving State money?

Ms. THOMASSON. Mr. Chertoff, I didn't do that kind of business for Lasater & Company. I was not involved in any of those issues.

Mr. CHERTOFF. But recognizing you specifically didn't do it, you were clearly in some sense involved with Mr. Lasater's business activities. I am asking you, to the best of your knowledge, from any source, did you ever hear that the Governor of the State of Arkansas, or any of the commissioners of the agencies that did Lasater bond work, ever raised the issue of whether there was a problem with Mr. Lasater getting this work when a Federal judge had, on the record, made findings that he was involved in bankruptcy fraud?

Ms. THOMASSON. I was not involved in that business, Mr. Chertoff. I don't know.

Mr. CHERTOFF. So I guess the answer is, to your knowledge, that was never raised as a question involving his qualifications?

Ms. THOMASSON. I wasn't exposed to those issues so I wouldn't have knowledge of that.

Mr. CHERTOFF. Now did you also get involved in handling Mr. Lasater's investments in New Mexico?

Ms. THOMASSON. Yes, I did.

Mr. CHERTOFF. Do you know whether Governor Clinton, at a point in time, spoke to the Governor of New Mexico and made an introduction for Mr. Lasater?

Ms. THOMASSON. We knew the Governor of New Mexico, and whether or not Governor Clinton introduced us or whether we were introduced by someone in New Mexico, I don't recall.

Mr. CHERTOFF. You don't remember Governor Clinton in any way intervening or dealing with the Governor of New Mexico on your behalf?

Ms. THOMASSON. I don't recall.

Mr. CHERTOFF. Did you get personally involved in the investment in New Mexico?

Ms. THOMASSON. Yes, I did.

Mr. CHERTOFF. Did you, in fact, meet with the Governor of New Mexico about getting his assistance in the investment?

Ms. THOMASSON. I don't recall having a personal visit with Governor Anaya. I recall being in social occasions with Governor Anaya.

Mr. CHERTOFF. In social occasions with Governor Anaya, did it come up?

Ms. THOMASSON. Social occasions were where the investment was; it was in New Mexico at the property.

Mr. CHERTOFF. Was the State of New Mexico involved in funding or assisting this investment in any way?

Ms. THOMASSON. No. The State of New Mexico was not involved, that I recall anyway, in funding the project.

Mr. CHERTOFF. When were these meetings with the Governor of New Mexico?

Ms. THOMASSON. In the fall of 1984; after we brought the project, we had a welcome party for all of our friends in New Mexico to kick off the start of a new season there. Governor Anaya was there.

Mr. CHERTOFF. And other than that socializing, was there any assistance you got from the State of New Mexico in that investment?

Ms. THOMASSON. I don't recall any specific assistance that we received from the State of New Mexico.

Mr. CHERTOFF. Now are you familiar with an operation called Emerald Isle?

Ms. THOMASSON. Yes, I am.

Mr. CHERTOFF. What was Emerald Isle?

Ms. THOMASSON. It was a time-share resort.

Mr. CHERTOFF. What was the relationship between Lasater & Company or the Lasater Group and Emerald Isle?

Ms. THOMASSON. Emerald Isle was a subsidiary of the parent company of Lasater & Company.

Mr. CHERTOFF. You worked for the parent company?

Ms. THOMASSON. I did.

Mr. CHERTOFF. So Emerald Isle was a subsidiary of the company you worked for?

Ms. THOMASSON. It was.

Mr. CHERTOFF. What kind of time-sharing investment was it? Can you describe it for us?

Ms. THOMASSON. It was time-share. It was 40 condominium units and we sold interest in those 40 condominiums 1 week at a time.

Mr. CHERTOFF. Did you have transactions involving that investment with Madison Guaranty Savings & Loan?

Ms. THOMASSON. Madison Guaranty bought from Lasater & Company some paper that was generated at Emerald Isle prior to Lasater & Company buying it—prior to Lasater, Inc. buying it.

Mr. CHERTOFF. Run through this transaction with me and explain how Madison Guaranty Savings & Loan came to be involved in buying investment paper related to this time-sharing operation.

Ms. THOMASSON. As time-share intervals were sold, there were notes and mortgages generated. So each time you sold a time-share

week, unless someone paid cash, paid so much down, generated a note, and a mortgage was taken back. So then you had notes and mortgages that you sold, or hypothecated to someone else. In the case of Madison, they bought some of the time-share paper—that was generated prior to the time that Lasater bought the property.

Mr. CHERTOFF. So you are saying that the paper that was bought was bought from sales that occurred before the Lasater group was involved in the sales?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. So when Lasater bought the property, what happened with respect to the notes that were held by Madison Guaranty?

Ms. THOMASSON. The sale took place after Lasater bought the property.

Mr. CHERTOFF. I'm sorry. The sale of the notes?

Ms. THOMASSON. The sale of the notes took place after Lasater brought the property.

Mr. CHERTOFF. Let's make sure I understand this. There is a development called Emerald Isle, they are selling time-shares. Some of those time-shares are being bought with notes or mortgages to the seller; right?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Lasater buys the property; right?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. And buys the notes; right? Or gets the notes, holds the notes?

Ms. THOMASSON. I am not sure that I can say that's how that transaction went down, Mr. Chertoff. It was—I am not sure that's what really happened. I am not sure Lasater ever bought those notes. Lasater & Company might have made an agreement with Madison Guaranty to buy the notes from the original holder of the notes, which was not Emerald Isle but was a bank in Hot Springs.

Mr. CHERTOFF. So what you are saying is, your recollection, there is some kind of joint venture where in a sense Lasater came in and bought the property and Madison came in and bought the notes?

Ms. THOMASSON. At some time Madison bought some of Emerald Isle's notes; yes.

Mr. CHERTOFF. What year was this?

Ms. THOMASSON. 1984 or 1985.

Mr. CHERTOFF. Did you get involved in setting that up?

Ms. THOMASSON. No, I did not.

Mr. BEN-VENISTE. If there is some point to make on Emerald Isle, you know, I encourage you to make it and finish that area. It is not anything I ever heard of before, and we have gone once again right for the capillary.

Mr. CHERTOFF. Is that a question?

The CHAIRMAN. Let's stop this. Come on.

Mr. CHERTOFF. What happened with respect to that investment?

Ms. THOMASSON. Emerald Isle?

Mr. CHERTOFF. Yes.

Ms. THOMASSON. What do you mean, what happened to it?

Mr. CHERTOFF. What happened to the development? Did Lasater hold the investment? Did they sell it again?

Ms. THOMASSON. Continued to sell time-shares and I guess they continue to sell time-shares today. I don't know.

Mr. CHERTOFF. So your involvement dropped out?

Ms. THOMASSON. No. At some point I had responsibility for managing the management company that managed Emerald Isle, so yes, I was involved on a day-to-day basis. I was also involved with a company who collected the monthly payments on the notes and mortgages and made sure that anyone who had investments in Emerald Isle paper got their checks every month.

Mr. CHERTOFF. Did you collect also on behalf of Madison Guaranty Savings & Loan?

Ms. THOMASSON. We did.

Mr. CHERTOFF. How did this come about? Were you involved in bringing Madison Guaranty Savings & Loan into this transaction?

Ms. THOMASSON. I was not.

Mr. CHERTOFF. Who did it; who was involved?

Ms. THOMASSON. Dan Moudy did it.

Mr. CHERTOFF. Dan Moudy?

Ms. THOMASSON. Yes.

Mr. CHERTOFF. What was his position?

Ms. THOMASSON. Senior Vice President of Lasater & Company.

Mr. CHERTOFF. How did he come to get a savings and loan, in the mix of purchasing notes on this investment, how did that come about?

Ms. THOMASSON. You will have to ask him, Mr. Chertoff.

Mr. CHERTOFF. You don't know that?

Ms. THOMASSON. I don't know that.

Mr. WILLIAMS. Mr. Chairman, I'm sorry. I would ask the Chairman's permission at this time, we have a saying in Arkansas, that I need to go see a man about a horse right now.

The CHAIRMAN. I don't believe we have any more questions, so why don't we take a 5-minute break and get the next panel out.

Mr. BEN-VENISTE. Let me finish up in this area. It will take me 1 minute.

Mr. WILLIAMS. That's fine. The horse can wait.

Mr. BEN-VENISTE. If the horse can wait a minute.

Let me just ask whether Lasater & Company was in the business of developing real estate?

Ms. THOMASSON. Lasater, Inc. was in the business of developing real estate.

Mr. BEN-VENISTE. Was Lasater, Inc. in the business of holding mortgages?

Ms. THOMASSON. No, we sold our mortgages.

Mr. BEN-VENISTE. Was Madison Savings & Loan a savings and loan?

Ms. THOMASSON. It was, sir.

Mr. BEN-VENISTE. Are savings and loans in the business of holding mortgages?

Ms. THOMASSON. Yes, sir, they are.

Mr. BEN-VENISTE. That's it. I think I beat the minute.

The CHAIRMAN. All right, we are going to take a 5-minute recess.

Ms. Thomasson, we thank you for your testimony, and we will bring on the second panel.

[Recess.]

The CHAIRMAN. May I ask the witnesses to please stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. Let me thank all of you for coming today and ask if any of you have a statement you want to make for the record? Mr. Strange.

**SWORN TESTIMONY OF J. WESLEY STRANGE
FORMER PRESIDENT & CEO, 1ST OZARK NATIONAL BANK**

Mr. STRANGE. I have no statement.

The CHAIRMAN. Mr. Penick.

**SWORN TESTIMONY OF EDWARD M. PENICK
FORMER PRESIDENT
TWIN CITY BANK OF NORTH LITTLE ROCK
FORMER CHAIRMAN OF THE BOARD
1ST OZARK NATIONAL BANK**

Mr. PENICK. No, sir.

The CHAIRMAN. Ms. Eldridge.

**SWORN TESTIMONY OF MARGARET (DAVENPORT) ELDRIDGE
FORMER SENIOR VICE PRESIDENT
TWIN CITY BANK OF NORTH LITTLE ROCK**

Ms. ELDRIDGE. No, sir.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Good afternoon, panel.

Mr. Penick, I would like to begin with you, sir, if I might. Now during the 1980's, you were the President of the Twin City Bank; is that right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Twin City Bank was the flagship bank of a bank holding company called TC Bankshares?

Mr. PENICK. Not technically right, no, sir.

Mr. GIUFFRA. What was Twin City Bank, was it part of the holding company?

Mr. PENICK. No, sir, not at this time.

Mr. GIUFFRA. Was Twin City Bank owned by the same person who owned the holding company?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Who was that person?

Mr. PENICK. Mr. Lyon.

The CHAIRMAN. Could you pull that microphone up a little closer. You can pull it right up. Great.

Mr. GIUFFRA. And Twin City Bank was one of the largest State-chartered banks in Arkansas?

Mr. PENICK. Yes, sir, that's correct.

Mr. GIUFFRA. In 1984, TC Bankshares, owned by Mr. Lyons, acquired a bank called Citizens Bank & Trust of Flippin; right?

Mr. PENICK. Not the exact date. It did acquire that bank in the mid-1980's.

Mr. GIUFFRA. In the mid-1980's, and the bank was subsequently renamed 1st Ozark?

Mr. PENICK. 1st Ozark National Bank, yes, sir.

Mr. GIUFFRA. You became the Chairman of 1st Ozark?

Mr. PENICK. That's correct.

Mr. GIUFFRA. In your capacity as the Chairman of Twin City Bank, your responsibilities included legislative lobbying; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. You would sometimes meet with legislators to discuss legislation?

Mr. PENICK. That's right.

Mr. GIUFFRA. You would sometimes meet with Governor Bill Clinton to discuss legislation?

Mr. PENICK. I was in larger group meetings with Governor Clinton. I never met one on one that I recall.

Mr. GIUFFRA. During those longer group meetings, you discussed legislation with Governor Clinton; and that was the purpose of the meeting; right?

Mr. PENICK. Yes, sir. At the time, too, I was Chairman of the Chamber of Commerce and we did discuss legislation that was non-bank-related also.

Senator SARBANES. Chairman of which Chamber of Commerce?

Mr. PENICK. Greater Little Rock Chamber of Commerce.

Mr. GIUFFRA. But you sometimes attended meetings with Governor Clinton of which there was discussion of banking legislation?

Mr. PENICK. Yes, sir, among other legislation.

Mr. GIUFFRA. You knew Mrs. Clinton; correct?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. The Rose Law Firm had represented the Twin City Bank in some matters?

Mr. PENICK. That's correct.

Mr. GIUFFRA. You had some contact with Mrs. Clinton in connection with that representation by the Rose Law Firm?

Mr. PENICK. I only can recall one instance where I had contact with her, and I am not sure it was even in the 1980's, relative to representation of Twin City Bank.

Mr. GIUFFRA. Did there come a time, after you became the Chairman of 1st Ozark, that you learned that 1st Ozark had a Whitewater loan?

Mr. PENICK. I can't recall specifically when I found out. It could have been before the transaction was closed; it could have been right after.

Mr. GIUFFRA. But you learned that the Whitewater Development Corporation had a loan with 1st Ozark; right?

Mr. PENICK. I learned that Whitewater Development had a loan with either Citizens or 1st Ozark Bank.

Mr. GIUFFRA. And you learned that the borrowers in connection with that loan included Governor and Mrs. Clinton; right?

Mr. PENICK. They were guarantors of the loan, yes, sir.

Mr. GIUFFRA. You learned that they had personally guaranteed the loan?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Did you ever have any contact with Mrs. Clinton about the Whitewater loan that was at 1st Ozark?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. What was the nature of the contact you had with Mrs. Clinton about this Whitewater loan that was at 1st Ozark?

Mr. PENICK. It was a letter I wrote to her.

Mr. GIUFFRA. You wrote her a letter to ask for what?

Mr. PENICK. A personal financial statement.

Mr. GIUFFRA. Why did you write the letter to Mrs. Clinton?

Mr. PENICK. It seemed to be a more effective thing to do because if I wrote Governor Clinton, it would go to the State capitol possibly, or it would go to the Governor's Mansion and may or may not end up in his hands, and certainly would not be treated personal and confidential as it was intended to be.

Mr. GIUFFRA. And you were afraid that if it got out that the Clintons needed to submit a personal financial statement in connection with this loan, there might be some adverse publicity toward the Clintons?

Mr. PENICK. No, sir.

Mr. GIUFFRA. But you wanted to keep it confidential that there was a problem with the loan?

Mr. PENICK. We treated all borrowing relationships with customers confidential.

Mr. GIUFFRA. Am I correct that you volunteered to write this letter after the Clintons' name appeared on a document deficiency list that was discussed at a Bank Board Meeting?

Mr. PENICK. Yes, sir, that's the best of my recollection.

Mr. GIUFFRA. Why do banks maintain document deficiency lists?

Mr. PENICK. It is a prudent lending practice.

Mr. GIUFFRA. Now banks normally will obtain current financial disclosure statements from their borrowers; right?

Mr. PENICK. That is a prudent lending practice also, yes, sir.

Mr. GIUFFRA. You normally include such a statement in your loan file; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. This is the sort of routine documentation that is required by Federal and State bank regulators; right?

Mr. PENICK. You are—if you do not have it in the file, it appears in examination report—

Mr. GIUFFRA. But you will be criticized by the regulators?

Mr. PENICK. They write up a report, yes, sir, and it goes to the Board of Directors.

Mr. GIUFFRA. Banks don't normally want to get written up by bank regulators?

Mr. PENICK. It is prudent lending and management practice not to have that done.

Mr. GIUFFRA. One of the purposes of a financial statement is to allow the bank to estimate the value of the guarantee; right?

Mr. PENICK. It is used to evaluate the guarantor's capacity to handle deficiency in the event one occurs.

Mr. GIUFFRA. It also might be helpful to obtain such a financial statement in deciding whether to renew a loan; right?

Mr. PENICK. It should be reviewed, yes, sir, in the process of a loan renewal.

Mr. GIUFFRA. If a borrower fails to provide a financial statement, might that be a red flag to a bank?

Mr. PENICK. It depends on the circumstances.

Mr. GIUFFRA. But it could be an indication that the loan is in some trouble?

Mr. PENICK. Not necessarily.

Mr. GIUFFRA. But you would agree that it is something that might be a source of concern for a lending officer?

Mr. PENICK. It is a prudent lending practice, if you have guarantors, to have a current financial statement, yes, sir.

Mr. GIUFFRA. There came a time when you obtained a copy of a blank financial statement, and sent it to Mrs. Clinton; right?

Mr. PENICK. I wrote Mrs. Clinton a letter and I attached a blank personal financial statement form, which we have on record with the letter, as I recall.

Mr. GIUFFRA. Now, Mr. Strange, you were the President of 1st Ozark Bank; right?

Mr. STRANGE. That's correct.

Mr. GIUFFRA. You learned that the Whitewater loan was on your document deficiency list?

Mr. STRANGE. That's correct.

Mr. GIUFFRA. It was missing an updated financial statement from the Clintons?

Mr. STRANGE. Correct.

Mr. GIUFFRA. In approximately March 1987, you were looking to renew that loan; is that right?

Mr. STRANGE. I believe that is right.

Mr. GIUFFRA. You were waiting to obtain this financial statement from the Clintons before you could renew the loan?

Mr. STRANGE. Yes.

Mr. GIUFFRA. Now did there come a time when you saw Governor Clinton?

Mr. STRANGE. As I recall, yes, there was.

Mr. GIUFFRA. Did you ask Governor Clinton about this loan?

Mr. STRANGE. Not specifically.

Mr. GIUFFRA. Did you ask Governor Clinton to contact you about the loan?

Mr. STRANGE. Yes, I did.

Mr. GIUFFRA. Did there come a time when Mrs. Clinton subsequently contacted you about the loan?

Mr. STRANGE. There was.

Mr. GIUFFRA. What did you tell Mrs. Clinton about the loan?

Mr. STRANGE. I don't recall specifically at this time what our conversation consisted of. It was something in regard to the—that the loan was up for renewal, and we were needing a financial statement.

Mr. GIUFFRA. Did there come a time when Mrs. Clinton submitted the financial statement?

Mr. STRANGE. There was.

Mr. GIUFFRA. Did you subsequently renew the loan?

Mr. STRANGE. Yes.

Mr. GIUFFRA. In fact, the records indicate that you obtained the financial statement on March 24th, and renewed the loan on March 26th. Does that sound accurate?

Mr. STRANGE. That would be about right; yes.

Mr. GIUFFRA. Now, Mr. Penick, in 1987, were banks in Arkansas able to branch outside of the city or town in which they were incorporated?

Mr. PENICK. Yes, sir, to my best recollection.

Mr. GIUFFRA. Let's say January 1987, your bank was located in North Little Rock?

Mr. PENICK. That's correct.

Mr. GIUFFRA. Could you open a branch in Little Rock at the time?

Mr. PENICK. No, sir.

Mr. GIUFFRA. So you could not locate a branch outside of the town in which you were incorporated?

Mr. PENICK. Not in January 1987, no, sir.

Mr. GIUFFRA. So as of January 1987, a bank in Arkansas was restricted by a bank branching law from setting up a branch outside of the town or the city in which it was incorporated; right?

Mr. PENICK. That's a matter of legal interpretation. There are a lot of other ways that banks can branch. So I can't testify exactly where that's accurate or not.

Mr. GIUFFRA. But your bank could not open a branch in Little Rock?

Mr. PENICK. That is correct. Twin City Bank is a State bank, FDIC insured, and could not.

Mr. GIUFFRA. You were limited to having offices in North Little Rock?

Mr. PENICK. State that again.

Mr. GIUFFRA. You could only have your branches in North Little Rock in January 1987?

Mr. PENICK. As a State bank, I believe that's correct.

Mr. GIUFFRA. Little Rock was a far more lucrative market potentially than North Little Rock; right?

Mr. PENICK. That's a matter of opinion.

Mr. GIUFFRA. Did you think it was a more lucrative market?

Mr. PENICK. There were more people there; there was more money there.

Mr. GIUFFRA. In 1987, did Twin City Bank, as part of its legislative agenda, want to change the State's bank branching law?

Mr. PENICK. Yes, sir. Twin City Bank and others who supported changing the legislation did, so.

Mr. GIUFFRA. In fact, wasn't the change in the bank branching law the most important item on your legislative agenda?

Mr. PENICK. No, sir.

Mr. GIUFFRA. Was there a more important item on your legislative agenda?

Mr. PENICK. Yes.

Mr. GIUFFRA. What would that have been?

Mr. PENICK. We have an archaic usury provision in Arkansas that only allowed 10 percent interest.

Mr. GIUFFRA. Along with the 10 percent usury limitation, the bank branching limitation was on your legislative agenda?

Mr. PENICK. Yes, it was important.

Mr. GIUFFRA. Something you worked toward changing?

Mr. PENICK. One of the things we worked on to change.

Mr. GIUFFRA. Did there come a time in 1987, when legislation was introduced to allow banks in counties with populations above 200,000 to branch throughout the county?

Mr. PENICK. That's correct.

Mr. GIUFFRA. And this obviously would have been a great benefit to Twin City; right?

Mr. PENICK. It would open up new opportunities for us.

Mr. GIUFFRA. Am I correct that Pulaski County contains both North Little Rock and Little Rock?

Mr. PENICK. And other communities, yes.

Mr. GIUFFRA. Pulaski County was the only county in Arkansas with a population above 200,000?

Mr. PENICK. That's correct.

Mr. GIUFFRA. So that the only banks that would benefit from this particular legislation were those located in Pulaski County?

Mr. PENICK. No, sir.

Mr. GIUFFRA. But if Pulaski County was the only county with a population above 200,000, no other banks would benefit? If you were outside Pulaski County, you would not benefit?

Mr. PENICK. And as I recall, there were provisions for extended branching in the bill also, so other banks outside Pulaski County were ultimately going to benefit.

Mr. GIUFFRA. That was the 1988 legislation; right?

Mr. PENICK. I seem to recall it was in 1987, too.

Mr. GIUFFRA. This legislation was called Act 539; is that right?

Mr. PENICK. Yes.

Mr. GIUFFRA. Was that opposed by the Arkansas Bankers Association?

Mr. PENICK. As best as I can recall, they did.

Mr. GIUFFRA. It was also opposed by the Independent Bankers Association of Arkansas?

Mr. PENICK. My best recollection, yes.

Mr. GIUFFRA. Am I correct that the majority of the banks in Arkansas, at least in numerical terms, opposed Act 539?

Mr. PENICK. I don't think there was ever a head count taken, but there were more banks outside the populated area that would be opposed to it.

Mr. GIUFFRA. Little Rock banks had little to gain by opening branches in North Little Rock; am I right?

Mr. PENICK. No, sir, I don't agree.

Mr. GIUFFRA. First Commercial's a bank that is located in Little Rock; right?

Mr. PENICK. First Commercial is, yes, sir.

Mr. GIUFFRA. It was a competitor of your bank during this time; is that right?

Mr. PENICK. That's correct.

Mr. GIUFFRA. In fact, didn't they sue Twin City Bank, after the legislation was put in place, in order to declare the law unconstitutional?

Mr. PENICK. I am not sure who the plaintiffs and the defendants were, but there was definite litigation over that issue; correct.

Mr. GIUFFRA. You don't recall whether First Commercial was the other party to the litigation?

Mr. PENICK. I think they probably were, but again, I don't recall who the plaintiffs were and who the defendants were.

Mr. GIUFFRA. You spent a lot of time lobbying the legislature to obtain passage of Act 539; right?

Mr. PENICK. I did, yes, sir.

Mr. GIUFFRA. Can you recall contacting anyone from the Governor's office in connection with this legislation?

Mr. PENICK. I cannot recall that I did, no, sir.

Mr. GIUFFRA. But you might have done so?

Mr. PENICK. I don't recall that I did.

Mr. GIUFFRA. You don't recall one way or the other; is that right?

Mr. PENICK. I do not.

Mr. GIUFFRA. But you might have done so?

Mr. PENICK. I don't recall.

Mr. GIUFFRA. You obviously needed the Governor's support in order to have the legislation signed into law; right?

Mr. PENICK. It cannot be a law without the Governor's signature, that's correct.

Mr. GIUFFRA. And you had two of the most important trade associations for banks in Arkansas that were opposed to this particular legislation; right?

Mr. PENICK. No, sir.

Mr. GIUFFRA. The Arkansas Bankers Association is not one of the leading trade associations for banks in Arkansas?

Mr. PENICK. It is.

Mr. GIUFFRA. The Independent Bankers Association is also not a leading trade association?

Mr. PENICK. Not in my opinion, no, sir.

Mr. GIUFFRA. You would agree that the Bankers Association is?

Mr. PENICK. The Association of Bank Holding Companies was much more powerful and influential than the Independent Bankers Association, and I recall they were for the bill.

Mr. GIUFFRA. Now prior to the passage of Act 539, were you aware that a branching law applying just in Pulaski County might be unconstitutional under the Arkansas Constitution?

Mr. PENICK. I can recall that, yes, sir.

Mr. GIUFFRA. You know Marlin Jackson; right?

Mr. PENICK. I do, yes, sir.

Mr. GIUFFRA. Do you recall he switched his position with regard to Act 539 during the legislative consideration of the bill?

Mr. PENICK. I do not recall that.

Mr. GIUFFRA. Now, you recall that Governor Clinton ultimately signed the bill; right?

Mr. PENICK. Yes, sir, he did.

Mr. GIUFFRA. We know from records that the Committee has obtained that the bill was signed on April 1, 1987, which was just several days after the Clintons' Whitewater loan was extended on March 26, 1987. You are aware of that, aren't you?

Mr. PENICK. I don't know one way or another. I haven't seen documentation to that effect, no, sir.

Mr. GIUFFRA. After Act 539 was enacted into law, you opened a branch in Little Rock's business district; right?

Mr. PENICK. We opened two branches as I recall, yes, sir.

Mr. GIUFFRA. One of those branches was in a building called Capital Towers?

Mr. PENICK. That's correct.

Mr. GIUFFRA. And for those people who are familiar with Little Rock, that's now the TCBY building.

Mr. PENICK. TCBY Tower, yes, sir.

Mr. GIUFFRA. You were part owner of that building at the time?

Mr. PENICK. I am a minority partner in that building, yes, sir.

Mr. GIUFFRA. Let's put up the chronology that we have prepared. This chronology indicates that on January 8, 1987, the "1st Ozark Loan Committee—Renewal of the Whitewater loan is conditioned on receipt of financial disclosure statements from the Clintons and the McDougals."

Then sometime Mr. Penick, in early 1987, you would have written to Mrs. Clinton to ask to obtain that financial statement; right?

Mr. PENICK. No, sir.

Mr. GIUFFRA. You didn't write a letter to Mrs. Clinton?

Mr. PENICK. I testified I did write a letter. I don't know when I wrote the letter.

Mr. GIUFFRA. We have obtained the financial statement, a disclosure statement from the Clintons, which was submitted to your bank on March 24, 1987. So you have no reason to dispute that was when the financial disclosure statement came in?

Mr. PENICK. That's not correct, no, sir.

Mr. GIUFFRA. You don't believe the financial disclosure statement came on March 24, 1987?

Mr. PENICK. Would you repeat the previous question. I don't think that was accurate.

Mr. GIUFFRA. My question was you wrote a letter to Mrs. Clinton; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. You wrote a letter asking her about a financial disclosure statement; is that right?

Mr. PENICK. That's right.

Mr. GIUFFRA. You wrote the letter after the Whitewater loan appeared on a document deficiency list; right?

Mr. PENICK. I do not know that, no, sir.

Mr. GIUFFRA. You were advised that there was a need for a financial disclosure statement from the Clintons; right?

Mr. PENICK. That's correct.

Mr. GIUFFRA. Presumably, if it is on the document deficiency list, we know that, as of January 8, 1987, there was a problem with regard to documentation of that loan, from the documents we have, OK. So your contact with Mrs. Clinton was sometime prior to when the Clintons put in the financial disclosure statement; right?

Mr. PENICK. No, sir. I don't know when I wrote Mrs. Clinton the letter.

Mr. GIUFFRA. As a simple matter of logic, you wouldn't have written a letter to Mrs. Clinton asking for a financial disclosure statement if the bank already had one; right?

Mr. PENICK. If the loan was renewed on an annual basis, it could have been a previous year when the loan was renewed that we didn't have a financial statement, and I wrote her at that time. I do not remember and don't have a copy, and have not seen a copy of the letter I wrote Mrs. Clinton.

Mr. GIUFFRA. The record at least that we have before us shows that the bank wanted a financial statement on January 8, 1987. There was a document deficiency. We know that the financial statement was dated and provided on March 24, 1987, and we know that the loan was extended on March 26, 1987. We know that

Governor Clinton signed the law allowing Twin City Bank to enter the lucrative Little Rock market approximately 5 days later.

Now, Mr. Strange, your recollection is there was a problem with regard to the financial statement in 1987; right?

Mr. STRANGE. That's correct.

Mr. GIUFFRA. Ultimately, you got the financial statement; right?

Mr. STRANGE. That is correct.

Mr. GIUFFRA. And you extended the loan on the 26th; right?

Mr. STRANGE. Right.

Mr. GIUFFRA. The records indicate that the legislation was signed 5 days later allowing Twin City to benefit and go into the lucrative Little Rock market.

Let's turn to 1988. Mr. Penick, do you recall a special session of Arkansas legislature, in 1988, that considered possible legislation which would allow branching of banks throughout Arkansas over a 10-year period, was it going to be phased in?

Mr. PENICK. Yes, sir, I recall there was a session called to address that issue.

Mr. GIUFFRA. Am I correct that Twin City was concerned about the possible inclusion of a provision in that law that would have forced Twin City to close its Capital Towers branch?

Mr. PENICK. Yes, sir. We thought it was unfair.

Mr. GIUFFRA. In fact prior to 1987, under Arkansas law, a bank could not locate a branch within 300 feet of the principal office of another bank; right?

Mr. PENICK. Prior to 1987?

Mr. GIUFFRA. Yes.

Mr. PENICK. That's correct.

Mr. GIUFFRA. So the 1987 legislation allowed you to locate a branch within 300 feet of a principal office of another bank; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Capital Towers was located within 300 feet of First Commercial's main office; right?

Mr. PENICK. No, sir. That's the question of fact; we were never able to determine that accurately.

Mr. GIUFFRA. There was litigation or at least a dispute, as to whether you could locate your branch in the Capital Towers building; is that right?

Mr. PENICK. Yes.

Mr. GIUFFRA. Because First Commercial claimed it was within 300 feet of their main office?

The CHAIRMAN. Mr. Penick, come on. I mean, there was a dispute and the question was whether they were within the proximity permitted by the law; isn't that correct?

Mr. PENICK. Senator, I do not know that.

The CHAIRMAN. I am not asking you to ascertain whether they were within the law. There was a dispute that took place; right?

Mr. PENICK. Yes, sir, there was that.

The CHAIRMAN. The question was not whether or not it fell in or outside of the number of feet, or the specified distance that had to be maintained between the banks. I am not asking you to concede that it was in the 300 feet or out, but there was that dispute and it centered around that situation; isn't that correct?

Mr. PENICK. Yes, sir. There was a dispute, not a dispute but a question of how that 300 feet is measured, is it measured from exterior—

The CHAIRMAN. Right, from the parking lot or the lobby. I used to do a little of this work years ago. OK, come on, let's go.

Mr. GIUFFRA. Twin City lobbied against including this 300-foot limitation in the Omnibus Bank Bill; right?

Mr. PENICK. No, sir.

Mr. GIUFFRA. You didn't lobby against it?

Mr. PENICK. No, sir.

Mr. GIUFFRA. You say you never lobbied against having this 300-foot limitation?

Mr. PENICK. We were in favor of the bill; we were opposed to 300-foot limitation and lobbied—

Mr. GIUFFRA. Go ahead.

Mr. PENICK. —lobbied to extract the 300-foot amendment from the bill.

Mr. GIUFFRA. There were banks that wanted the 300-foot limitation in the bill; right?

Mr. PENICK. Yes, sir. First Commercial particularly.

Mr. GIUFFRA. OK. So you lobbied to extract the 300-foot limitation from the bill; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Do you recall lobbying Governor Clinton's office in connection with removing this 300-foot limitation?

Mr. PENICK. No, sir, I cannot remember contacting the Governor's office on that issue.

Mr. GIUFFRA. Did you ever lobby Betsey Wright on this issue?

Mr. PENICK. Not that I can recall, no, sir.

Mr. GIUFFRA. What was the name of the Chairman of Twin City Bank?

Mr. PENICK. The Chief Executive Officer and Chairman was Terry Renaud?

Mr. GIUFFRA. Do you know whether Mr. Renaud ever spoke to Ms. Wright?

Mr. PENICK. I do not know, no, sir.

Mr. GIUFFRA. Do you ever recall lobbying Governor Clinton in connection with removing this amendment that would have caused you to remove your branch in the Capital Tower?

Mr. PENICK. I cannot recall, no, sir.

Mr. GIUFFRA. Do you know whether Governor Clinton ultimately supported eliminating this amendment from the bill?

Mr. PENICK. I know he signed a 1988 bill without the 300-foot provision in there, but I don't know whether he took a position on 300 feet or not.

Mr. GIUFFRA. Now, Mr. Penick, do you recall writing a note to Governor Clinton, thanking him for removing this 300-foot provision from the bill?

Mr. PENICK. No, sir.

Mr. GIUFFRA. Let's put up on the Elmo a document that bears Bates number JRTS 206. Now just to sort of get the record straight, this is a document that the Committee received from Mr. John Tisdale, who was custodian for certain papers of Governor Clinton.

The document is dated 7/5, presumably 1988. And is that your signature down at the bottom, sir?

Mr. PENICK. Yes, it is.

Mr. GIUFFRA. Is this your handwriting?

Mr. PENICK. Yes, it is.

Mr. GIUFFRA. Do you believe you wrote this note?

Mr. PENICK. Yes, I do.

Mr. GIUFFRA. Let me read the letter, it's to "Bill" and then it has across the top "Gov." In the upper part of the document and to the left of "Gov" there is the distinctive checkmark we have seen on other documents that Governor Clinton has reviewed. It says:

Bill:

It has been reported to me your assistance on the Omnibus Bankers Bill and the 300-foot provision and I wanted to relay our appreciation for taking this stand. Terry and I can't understand why Mr. Bowen feels so threatened by our little office in Capital Tower.

Now do you recall sending this note to Governor Clinton?

Mr. PENICK. No, sir.

Mr. GIUFFRA. Presumably you did, it was found in his papers?

Mr. PENICK. I don't presume that, no, sir.

Mr. GIUFFRA. Who else could it have been sent to? The document came from Governor Clinton's files. It has "Gov" on the top, and it's got a checkmark, that's the Clinton checkmark?

Mr. PENICK. I didn't put the checkmark on there. I didn't put "Gov" on there. Bill Ford was the Bank Commissioner at the time. It could have gone to Bank Commissioner Bill Ford.

Mr. GIUFFRA. This document wasn't produced by the banking commission. It was produced by Governor Clinton's lawyer.

Mr. PENICK. It is routine, in my understanding, that those administrative people send notes like that to the Governor's office.

The CHAIRMAN. Let me ask you something. Do you see this note?

Mr. PENICK. Yes, sir, I have a copy here in front of me.

The CHAIRMAN. Did you write it?

Mr. PENICK. Yes, sir.

The CHAIRMAN. You wrote it?

Mr. PENICK. Yes, sir. I said I did.

The CHAIRMAN. Where did you get this note from?

Mr. GIUFFRA. From Governor Clinton's document custodian. You see the notation "Gov" at the top of the letter; right?

Mr. PENICK. I see that, yes.

Mr. GIUFFRA. Now——

Senator SARBANES. That's not your notation, is it, Mr. Penick?

Mr. PENICK. No, it is not, Senator.

The CHAIRMAN. It is not your handwriting?

Mr. PENICK. It is my handwriting, yes, sir.

The CHAIRMAN. It is your handwriting? You wrote it.

Mr. PENICK. The "Gov" part is not my handwriting——

The CHAIRMAN. I understand you didn't write that. We got it from the Governor's office. You don't think that you wrote it to the Governor?

Mr. PENICK. Senator, I cannot recall——

The CHAIRMAN. Who do you think you wrote it to? Take a look at it.

Mr. PENICK. I believe I wrote it to Bill Ford.

The CHAIRMAN. To Bill who?

Mr. PENICK. Bill Ford. He was the State Bank Commissioner at the time. To the best of my recollection, he took a position against the 300-foot provision.

Mr. GIUFFRA. I would note, for the record, that the Committee sent a subpoena to the banking department, and no such document was produced to us by the banking department. The document was produced to us by Mr. Tisdale, who was the document custodian for the Governor's office.

Senator SARBANES. It could have been sent to the Governor by the banking commissioner for his information, which would comport with this "Gov" appearing on the top of it which is not in Mr. Penick's handwriting.

The CHAIRMAN. That's true. That could be the case. Let's move on. We will have to let it speak for itself.

Mr. GIUFFRA. And Mr. Bowen—

The CHAIRMAN. By the way, let me say something. I don't see any big deal about this. If you wrote a note to somebody you know who supported a legislative provision and you said, I can't understand why some people oppose it and thank you. I mean, we are all jumping up and down over here. You find the note in the Governor's office, so what? You know him, you knew him through the trade association, you deal with him. You are not supposed to say thank you.

But what I find bothers me is that we have to kind of drag certain things out, like when we talked with that 300-foot thing. No one asked you to concede whether it was in or out, but you knew there was a dispute about it. So be a little more forthcoming when you can and we will get through this thing faster. Let the facts speak for themselves. Don't try to be protective if you can.

I appreciate what you are saying. You are saying I may have sent this to a legislator and it may have found its way over there. Let's keep it going. What I am trying to say is let's not be so uptight. I have seen in the history of other witnesses sometimes the truth will really set them all free and there is no big deal. It is a logical kind of thing. But we are dancing around, and you know, it may be interpreted in a sinister manner. You want certain legislation, it was very important to you. So what, there is nothing wrong with that.

You wanted to do business in a particular town. Those were antiquated laws that existed that impeded people from doing this kind of thing. We had them throughout the country at various times and various States responded in different ways.

You have a legitimate interest to petition your Government—but when it happens, we become so uptight about it—then we say why aren't you being forthcoming. Now by the same token, we may try to put some kind of unflattering spin on this thing, but I want to see if we can't move on it.

Mr. GIUFFRA. Let's put up on the Elmo a comment which bears Bates number JRTS 195. This is a memo, dated July 5, 1988, which is the same date that was on the handwritten note from Mr. Penick. This is a memo from Betsey Wright to the "Gov, cc: Sam." That's Sam Bratton. It says:

Re: Bankers Bill.

Neither Sam nor I understands what your next step/follow-up with Bill Bowen is on the 300-foot issue.

The bill which is being delivered to this office in the morning by the Bankers Association/Bill Ford does *not* contain the 300-foot provision based on their conversation with you [the Governor] this morning.

So this memo from Ms. Wright seems to indicate it was Governor Clinton who intervened with Mr. Ford to have the 300-foot restriction taken out of the bill.

Let's put another document up on the Elmo. This is CBF411 and this is a request for a loan documentation waiver in connection with the Whitewater Development loan. It is dated July 15, 1988. And Mr. Strange, those are your initials down at the bottom?

Mr. STRANGE. Yes, it is.

Mr. GIUFFRA. It is an important act when you agree to do a loan documentation waiver; right? I mean, the president of the bank has to sign off on it; isn't that right?

Mr. STRANGE. One of the senior officers needs to sign off on it.

Mr. GIUFFRA. Not a purely administrative decision; right?

Mr. STRANGE. That's correct.

Mr. GIUFFRA. This particular waiver allowed both the Clintons and the McDougals not to put in any financial statements in connection with the renewal of their loan?

Mr. STRANGE. Correct.

Mr. GIUFFRA. Am I also not correct that the loan was extended on July 15, 1988?

Mr. STRANGE. I believe that to be right.

Mr. GIUFFRA. Which would be the same date that the waiver occurred. Let's briefly go through the chronology that we now have up on the easel. That chronology indicates that there was a dispute between Twin City and First Commercial—

The CHAIRMAN. The red light is on. Let me suggest this, so we will have a continuous flow. With your acquiescence, we let Mr. Giuffra continue for another 7 minutes, until 1:00 p.m., and then we will break for lunch. We will start with Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me just address this one if I might, Mr. Chairman, because I really don't think it is an issue of somebody being uptight or disingenuous. If he has written a letter to somebody, he ought to say who he recalls it having been, the letter—the note that has been identified here is in your handwriting, that's been established. It was written to Bill, but it doesn't say Bill who, and your recollection, as I understand your testimony, you were writing to the Bank Commissioner?

Mr. PENICK. Yes, sir, I can't recall specifically who it went to. It would be more consistent with the actions at the time that it would have been to Bank Commissioner, Bill Ford.

Mr. BEN-VENISTE. I understand you are being careful and you don't have a recollection. The note was written in 1987, obviously a long time ago. But, as I understand it, you had a first-name relationship with the Bank Commissioner, you knew the Banking Commissioner for some time, did you not?

Mr. PENICK. Yes, sir.

Mr. BEN-VENISTE. You had an Ed/Bill relationship; correct?

Mr. PENICK. That's correct.

Mr. BEN-VENISTE. Let me ask you whether you had that kind of a relationship with the Governor at the time?

Mr. PENICK. It really depended on the occasion, but more than likely it was Governor.

Mr. BEN-VENISTE. Do you feel you would have written him a note containing the information as reflected in this note, and addressed it Bill, and written it in the informal way that you did?

Mr. PENICK. It would be more consistent that this would go to Bill Ford, yes, sir.

Mr. BEN-VENISTE. We want you to be careful, we want you not to accept suggestions but rely on your recollection in giving testimony because you are under oath, and it is important that you give your best recollection.

Indeed, the concept of the branch banking legislation was, if I understand, a memo that has been produced to us that is entitled "File Notes, May 27, 1986." It has your name at the bottom. It isn't marked with a Bates number. But it reflects that in 1986, 10 months before this loan renewal, that the then-Commissioner of Banking, Marlin Jackson, indicated that it was, in his opinion, time for someone to foster legislation to permit countywide branching. Have you seen that memo?

Mr. PENICK. Yes, I have.

Mr. BEN-VENISTE. Is that consistent with your recollection; apparently it is your file note?

Mr. PENICK. Yes, sir, I dictated it.

Mr. BEN-VENISTE. Well, outside of any of these charts and chronologies, I mean, we had a perfect match here, and it was so inconvenient and we couldn't do anything with it. On April 4, 1985, there was a fundraiser at Madison Guaranty Savings & Loan, and on the very same day, the Governor signed authority for raising funds through a bond offering for the State police radio. And guess what? Everybody had to concede that was just a coincidence. These renewals were done on an annual basis; is that correct?

Mr. PENICK. It is my understanding, yes, sir.

Mr. BEN-VENISTE. We had testimony from Mr. Proctor yesterday that 40 percent, in dollar terms, of all of the loans in the portfolio lacked current or updated financial statements because of this continuous roll-over procedure. So it wasn't all that unusual to have in the file a loan that did not have a completely updated financial statement; isn't that so?

Mr. PENICK. It is not unusual; that's correct.

Mr. BEN-VENISTE. OK, and the loans that were renewed really were not dependent on the financial statement. This was a renewal of a loan, you knew about the property, you knew about the substance of the individuals. If in fact, the financial condition of the borrower had dramatically changed in a negative way, did you not have the right to call the loan?

Mr. PENICK. I don't have a copy of the note here in front of me. Generally, we had a demand or no-demand provision in the promissory notes, but I don't have a copy to review.

Mr. BEN-VENISTE. We go half an hour without anyone asking the central question, was there a quid pro quo for support for this branch banking legislation, in return for renewing the loan that

had already been made but given a waiver on the financial statement?

Mr. PENICK. Absolutely not.

Mr. BEN-VENISTE. Is that preposterous?

Mr. PENICK. It is a reach, yes, sir, in my opinion.

Mr. BEN-VENISTE. It is another example, in my view, of this conclusion-jumping facility, and I would like to come back to explore this, Mr. Chairman, if we are going to go into this in more detail.

The CHAIRMAN. Before we break, I want to touch on something. Have someone take this down to the witness. You see, Mr. Penick, you indeed have communicated with the Governor in an impersonal way and called him Bill, haven't you?

Mr. PENICK. Yes, sir, I probably have from time to time.

The CHAIRMAN. You have even written him in that fashion. Take a look at that letter; it's TCBe. That's the name of your company up there? What does that TCBe stand for?

Mr. PENICK. It was the logo, Senator, for the bank at the—

The CHAIRMAN. Tell me about it.

Mr. PENICK. It is a Bee; at the time Twin City Bank, and they had a logo with a Bee.

The CHAIRMAN. Read that to me. Did you write this letter?

Mr. PENICK. Those are not my initials. These were note pads that were used all over the bank for people to scribble notes on.

The CHAIRMAN. Come on now, Ed. Let's stop it. "Governor Bill Clinton." What does it say? Take a look at it, "Bill," huh? Right?

Mr. PENICK. I can barely read this copy, Senator. It says—I can't read the date.

The CHAIRMAN. It's June 6, 1988. Governor Bill Clinton. Then it says what?

Mr. PENICK. "Bill, the attached"—

The CHAIRMAN. "Bill, the attached copy is"—go ahead.

Mr. PENICK. "Is revised slightly from the previous one you had been furnished."

The CHAIRMAN. My only purpose is to say that you have. So it is not a kind of a reach—when we say look, this is what we see, it is in the file. Then at the end, EMP. Who is EMP?

Mr. PENICK. That's me.

The CHAIRMAN. Yes. You see, when you look at it, I mean, that's you. You said people had this all over. EMP. Nobody just signs your name or initials your name or types in your name, do they?

Mr. PENICK. Those are not my initials, no, sir.

The CHAIRMAN. Who is EMP?

Mr. PENICK. That's me.

The CHAIRMAN. So? I mean—

Mr. PENICK. I didn't type the note.

The CHAIRMAN. Of course, you didn't type the note. Someone typed the note for you; isn't that true, Edward?

Mr. PENICK. Yes, sir.

The CHAIRMAN. Thank you.

We stand in recess until 2:00 p.m.

Senator SARBANES. Let me be clear. You didn't initial this note either, did you?

Mr. PENICK. No, sir, those are not my initials, Senator.

The CHAIRMAN. No one suggested that you initialed—

Senator SARBANES. The letters are your initials but they were typed on the note by somebody; you didn't initial the note yourself; is that correct?

Mr. PENICK. That's correct.

The CHAIRMAN. Are you suggesting that somebody wrote this note on their own and put your name down there, EMP, and used your stationery?

Mr. PENICK. No, sir, I am not.

The CHAIRMAN. OK. We stand in recess.

[Whereupon, at 1:00 p.m., the hearing was recessed, to be reconvened at 2:15 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Mr. Penick, I did not notice heretofore the magnificent splendor of that very colorful tie of yours.

Mr. PENICK. Thank you, Senator. My daughter, Erica, picked that out. She told me to wear that.

The CHAIRMAN. That's a great tie she picked for you.

Mr. PENICK. It's a Jerry Garcia tie.

The CHAIRMAN. A who?

Mr. PENICK. Jerry Garcia.

Mr. GIUFFRA. The Grateful Dead.

The CHAIRMAN. I only really heard about him as a result of his passing because, I guess, it was quite sudden. I have to tell you that is the first time I knew who he was.

Mr. Ben-Veniste, why don't you let Mr. Giuffra go first and then I'll give you any other time you need.

Mr. BEN-VENISTE. I thought I used about 5 minutes of my 30.

The CHAIRMAN. Go ahead, and then we'll start with Mr. Giuffra.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Now, Mr. Strange, let me ask you what your position was at the bank in 1986?

Mr. STRANGE. I was President.

Mr. BEN-VENISTE. And you were a person who had been with the bank through virtually the entire history of this loan, what we've been calling the Whitewater loan; is that correct?

Mr. STRANGE. No, that is not correct. I came with the bank in January 1986.

Mr. BEN-VENISTE. You came in 1986 and you stayed until 1992?

Mr. STRANGE. That is correct.

Mr. BEN-VENISTE. Is it correct, that at the point when the loan matured, in December 1986, and a renewal of the loan was sought by the McDougals, that the loan balance had been paid down to approximately \$53,000?

Mr. STRANGE. I believe that is correct.

Mr. BEN-VENISTE. We established yesterday that the loan had been paid down from—what was the largest amount, to your knowledge?

Mr. STRANGE. I believe it was in the \$180-plus-thousand.

Mr. BEN-VENISTE. So it had been paid down from, \$187,000 or \$186,000 down to \$53,000 by 1986?

Mr. STRANGE. Correct.

Mr. BEN-VENISTE. Is that the type of thing that a bank looks at? Whether the principal has been paid down on a loan as to whether things seem to be going along in a reasonably reliable way?

Mr. STRANGE. Yes, it is.

Mr. BEN-VENISTE. From the standpoint of what was going on with that loan, at the time the renewal was requested in 1987, the loan was classified, or rated as 3. The rating system with 6 being the worst and 1 being the best?

Mr. STRANGE. Correct.

Mr. BEN-VENISTE. We have heard from witnesses yesterday, including Mr. Proctor, that virtually 80 percent of the loans in the portfolio at the bank at this time were characterized or identified as 3 on that rating scale. Would you agree with that?

Mr. STRANGE. That would be very close, yes.

Mr. BEN-VENISTE. A 3 rating signified a normal loan?

Mr. STRANGE. That is right.

Mr. BEN-VENISTE. Contrary to the statement in a book called "Blood Sport," which has a 3 rating as indicating a problem loan or a loan that is about to go into default, the true fact is that a 3 rating meant it was a normal loan?

Mr. STRANGE. Yes. A 3-rated loan was a standard acceptable credit in the bank with no particular problem.

Mr. BEN-VENISTE. Now the loan committee for 1st Ozark according to records that we have looked at in deposition testimony held its regular weekly meeting on January 8, 1987, and you were among the attendees at that meeting?

Mr. STRANGE. Very possible.

Mr. BEN-VENISTE. According to our records, you, Mr. Proctor and Vernon Dewey, two witnesses we had yesterday, attended that meeting. According to our records, 14 loans were considered at that meeting, and the Whitewater renewal loan was 1 of 8 commercial loans which was considered by the bank on its agenda. According to the testimony we have received, a single negative vote would have meant that the loan was not approved for renewal. Does that comport with your recollection?

Mr. STRANGE. That is right. The way the committee was structured, that it was not a unanimous vote to approve. It had to be—I mean, it had to be unanimous. Any one dissenting vote would withhold the application for further action on it.

Mr. BEN-VENISTE. Now at that time there were three conditions, according to the information we have received, which would have applied to approval of a loan renewal: First, that all sales proceeds, less commissions, be applied to the note; second, that all contracts were to be maintained at 1st Ozark; and third, would be updated financials. Now according to what occurred at that time, it appears that the conditions were met and the loan was renewed without dissent. Does that comport with your recollection?

Mr. STRANGE. I believe that's right.

Mr. BEN-VENISTE. When the loan was renewed in March 1987, it was subsequent to receipt of an updated financial statement by Mr. and Mrs. Clinton; correct?

Mr. STRANGE. I don't have the exact date of that renewal.

Mr. BEN-VENISTE. According to records that we have, the statement was received on March 24th; it was received by the bank on March 26th, and the loan renewal was approved on the 27th.

Mr. STRANGE. OK. The statement that I have indicates on the top, I believe, under Mr. Proctor's initials of 3/26 rather than 3/24.

Mr. BEN-VENISTE. It was apparently dated 3/24 at the bottom and received at the bank on 3/26.

Mr. STRANGE. I believe that's right.

Mr. BEN-VENISTE. The financial statement which we went into in some detail yesterday appears to be a two-sided form used by the bank for submitting a personal financial statement; correct?

Mr. STRANGE. Yes.

Mr. BEN-VENISTE. I am not going to go over the ground that we covered yesterday unless the Majority intends to do so, but I want to go now to the 1988 renewal. At that time, is it correct that Mrs.

Clinton telephoned you in 1988 with respect to seeking information for preparation of a tax return?

Mr. STRANGE. It is correct that she phoned me. I don't recall the exact date of that. Somewhere in the packet I believe there is a letter which I have responded which would approximate the date.

Mr. BEN-VENISTE. That would be an April 12, 1988 letter by you to Mrs. Clinton?

Mr. STRANGE. That is correct.

Mr. BEN-VENISTE. It is a short letter. Why don't you read that into the record?

Mr. STRANGE. It says:

Dear Mrs. Clinton:

As per our phone conversation, we have researched the transaction regarding the Whitewater Development Company, Inc. and they are enclosed. The loan and escrow data are for 1987 only and do not include any of the 1988 transactions. Hope this will help you in preparing your tax return and some type of balance sheet.

I have also enclosed a renewal note, hoping that you could help me in getting all the signatures on this and returning it as soon as possible.

In addition, we will be needing an updated financial statement on the personal, as well as the corporation.

Respectfully, J.W. Strange.

Mr. BEN-VENISTE. Thereafter, did Mrs. Clinton advise you that she had made several attempts to contact Mr. and Mrs. McDougal without success?

Mr. STRANGE. I believe she did, yes. The letter I have not found in my package yet but I believe there is one there.

Mr. BEN-VENISTE. And of course we know from information developed in this Committee that, as of that point, Mr. McDougal had been obliged to leave Madison Guaranty Savings & Loan, and that he had left Arkansas for California. I take it the efforts of 1st Ozark to contact the McDougals directly was unsuccessful?

Mr. STRANGE. That's correct.

Mr. BEN-VENISTE. Do you have in your file a letter dated June 9, 1988, from Mrs. Clinton to you in which she expressed or outlined the effort she had made to reach Mrs. McDougal about the materials needed for a loan extension. In a P.S. she said to you, "Wes, I do not know what else to do. If you have any suggestions, please give me a call. Thanks."

Mr. STRANGE. Yes, I have a copy of that letter.

Mr. BEN-VENISTE. Did you have some suggestions about what she might be able to do to try to find the McDougals at this point?

Mr. STRANGE. Not really. I think we were both at a loss as to what to do at that point.

Mr. BEN-VENISTE. And it seemed, did it not, as the result of your contact with Mrs. Clinton, that this whole thing had been dumped in her lap and that the McDougals were out of the picture and, for all intents and purposes, unreachable?

Mr. STRANGE. That's the way it appeared.

Mr. BEN-VENISTE. Now on July 13th, Mrs. Clinton wrote to you, apparently having given up trying to reach the McDougals. She said in part, "I am enclosing the renewal note you sent for Bill's and my signature. Despite repeated efforts, I have been unable to reach the McDougals." Is that correct?

Mr. STRANGE. That is correct.

Mr. BEN-VENISTE. On July 15, 1988, Mr. Proctor prepared a request for a waiver of financial statements for Whitewater Development Corporation and its guarantors; that is, the Clintons and the McDougals. In his request, which we have, he explained that the individual financial statements were unnecessary because, first, the payments on the loan are derived from escrow contracts controlled by 1st Ozark.

Mr. STRANGE. Correct.

Mr. BEN-VENISTE. The second reason was that the collateral was believed sufficient to cover the loan.

Mr. STRANGE. That is correct.

Mr. BEN-VENISTE. The request for a loan documentation waiver, approved by Mr. Proctor, was presented to you, his superior, for your approval?

Mr. STRANGE. Yes.

Mr. BEN-VENISTE. And you did?

Mr. STRANGE. Yes.

Mr. BEN-VENISTE. Did you have any problem in doing that?

Mr. STRANGE. No.

Mr. BEN-VENISTE. By this time, the loan had been paid down to approximately \$36,000?

Mr. STRANGE. I believe that's right.

Mr. BEN-VENISTE. In your view, it was supported by an adequate income as well as collateralized by the land?

Mr. STRANGE. Yes, and our basic history of the loan is that the payments were being made, so there was not a concern.

Mr. BEN-VENISTE. So this was a truly unremarkable event at the time, I take it?

Mr. STRANGE. Yes.

Mr. BEN-VENISTE. The bank regulations provided for you to authorize a waiver of the filing of personal financial statements under the circumstances?

Mr. STRANGE. Yes, they would.

Mr. BEN-VENISTE. So that this would not be considered a loan deficiency by the examiners?

Mr. STRANGE. That's right.

Mr. BEN-VENISTE. Now let's go to this fascinating coincidence of branch banking legislation. At the same time, this totally unremarkable extension of this paid-down loan was made by the bank. First, we focused and focused and focused on Governor Clinton's approval of this legislation. We have examined the timing and we have brought forward the fact that the prior State Bank Administrator Mr. Marlin Jackson, I believe, had recommended, 10 months prior to this loan renewal, that it would be a good idea to put forward a bill authorizing branch banking, and removing the restrictions.

Our information is the legislation passed the Arkansas House by a vote of 80 to 10, and that it passed the Senate by more than a 2 to 1 majority. Does that comport with your recollection?

Mr. STRANGE. I believe it would. I did not follow the legislation that closely, but I knew that it was passed with a wide majority.

Mr. BEN-VENISTE. Mr. Penick, does that comport with your recollection?

Mr. PENICK. Yes, sir, it does.

Mr. BEN-VENISTE. This was not a particularly close or controversial piece of legislation, from the standpoint of the votes involved, by the legislative body; correct?

Mr. STRANGE. I would think so.

Mr. BEN-VENISTE. "Blood Sport"—which obviously provides the basis for our going into all of this business of branch banking because it wasn't anything we had explored. I will be quite candid with you, prior to the publication of that book which indicates that the legislation was initiated by Twin City Bank, and indeed, we have now demonstrated with a memorandum dated 10 months earlier, previous to the passage of that legislation, that it was, in fact, initiated by a State regulator.

Let me ask you whether, in your view, there is any evidence to suggest, in any way, shape or form, any quid pro quo or relationship between the passage of branch banking legislation and the renewal of this now \$36,000 unremarkable Whitewater loan?

Mr. STRANGE. There was none that I am aware of or knew of at the time, and still don't know. The book that you refer to, I have not read in any detail, but the parts that I have read seem to be more fiction than fact.

Mr. BEN-VENISTE. Mr. Penick, do you have a view on this?

Mr. PENICK. I would agree, yes, sir.

Mr. BEN-VENISTE. Ms. Eldridge?

Ms. ELDRIDGE. I would agree.

Mr. BEN-VENISTE. In connection with the 1987 loan renewal, is it correct that the Clintons were not in any way removed or released from responsibility for the ultimate repayment of that loan?

Mr. STRANGE. No, they were not.

Mr. BEN-VENISTE. Is it correct that that loan was unremarkable in terms of other commercial loans made by your bank at the time with regard to the length of the extension and the interest rate charge?

Mr. STRANGE. I think it could be classed that way. It was unremarkable.

Mr. BEN-VENISTE. Mr. Strange, can you think of any reason why the Clintons would have some nefarious or untoward motive for not wanting to submit a financial statement which was ultimately submitted in April 1987?

Mr. STRANGE. Not that I know of.

Mr. BEN-VENISTE. They had previously submitted financial statements to your and other banks; and, of course, Governor Clinton had submitted state-mandated financial disclosure forms which identified the Whitewater investments.

Mr. Penick, can you think of any reason why that would motivate the Clintons to be worried or otherwise be concerned about submitting a financial statement, other than the nuisance involved as this loan rolled over?

Mr. PENICK. Not to my knowledge, no, sir.

Mr. BEN-VENISTE. Can you, Ms. Eldridge?

Ms. ELDRIDGE. Sir, I didn't have any involvement with this loan.

Mr. BEN-VENISTE. Well, since you were there, you are a target of opportunity and this is what happens in these hearings. I'm not suggesting you should have any knowledge. This book, "Blood Sport," seems to imply that the Twin City Bank was the only bank

that favored this 1987 legislation on branch banking. Mr. Penick, were there other banks that, to your knowledge, specifically, supported this legislation?

Mr. PENICK. Yes, sir, there were.

Mr. BEN-VENISTE. Can you tell us who supported the legislation? Was it just a fluke that it passed 80 to 10 in the House?

Mr. PENICK. No, sir, there were a lot of banks that were concerned about our restrictive branching legislation, and we needed to break the mold and start liberalizing those branching laws to be competitive with other States and be competitive with the savings and loans. Union National Bank, which was probably the third largest bank in the State was a close ally with us in this lobbying effort. The Arkansas Association of Bank Holding Companies was very supportive of it. A bank in Jacksonville, Arkansas and the Walton Banks were very supportive of it. And there were other banks out in the State that thought it was time to liberalize our branching laws.

Mr. BEN-VENISTE. As the Chairman has pointed out, you viewed this as a somewhat archaic restriction which put you at a disadvantage in Arkansas and with other States?

Mr. PENICK. Yes, sir, it was just a matter of time, in our opinion. The Mississippi—the Deposit & Guaranty case had just been announced in Mississippi where the Comptroller of the Currency was granting Deposit & Guaranty National Bank the authority to branch statewide and there were lots of pressures from the savings and loans to receive more liberal branching. The Comptroller of the Currency was more lenient in branching areas and certainly had the authority in some cases to step in and grant branching applications that State banks didn't have the right to.

Mr. BEN-VENISTE. In the minute of my remaining time, can you explain the support that the 1988 legislation enjoyed?

Mr. PENICK. Yes, sir. Basically in the end, everybody supported the compromise legislation in the Omnibus Banking Bill. Different factions started out with different drafts of the bill and they had different issues in it that had to be lobbied and resolved, but ultimately it was a pretty fairly unanimous effort to get the thing passed through various stages.

Mr. BEN-VENISTE. In term of the ultimate vote, more or less on the same lines?

Mr. PENICK. I believe so. I cannot recall it specifically.

Mr. BEN-VENISTE. I don't have those figures. I wouldn't want to mislead you by suggesting I know them, but if you have any reason to believe that this was a closer vote, than the 1987 legislation, I would like to hear your view.

Mr. PENICK. No, sir. Basically, if the bankers get their act together and agree on a bill, it would go through the legislative process without problems.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Mr. Strange, you testified that there was "no particular problem" with the Whitewater loan. Do you recall that testimony?

Mr. STRANGE. Yes, I do.

Mr. GIUFFRA. You are familiar with the system of rating loans, pass, special mention, substandard, doubtful, and loss; right?

Mr. STRANGE. Yes.

Mr. GIUFFRA. At your bank, what would a 6 be?

Mr. STRANGE. It would be doubtful.

Mr. GIUFFRA. What would a 5 be?

Mr. STRANGE. Probably would be a substandard.

Mr. GIUFFRA. What would a 4 be?

Mr. STRANGE. Watch.

Mr. GIUFFRA. What would a loss be? Wouldn't a loss be a 6?

Mr. STRANGE. Yes.

Mr. GIUFFRA. Loss would be a 6, doubtful would be a 5, substandard would be a 4; right?

Mr. STRANGE. Right.

Mr. GIUFFRA. Then what's called a special mention, you're substandard? You're familiar with that term, are you?

Mr. STRANGE. Yes.

Mr. GIUFFRA. That would probably be a 3?

Mr. STRANGE. No, not in our bank.

Mr. GIUFFRA. What would be a pass loan?

Mr. STRANGE. A 3 would be pass loan.

Mr. GIUFFRA. What would a 1 be?

Mr. STRANGE. 1? A 1-rated loan?

Mr. GIUFFRA. Would that be a pass loan as well?

Mr. STRANGE. Yes.

Mr. GIUFFRA. And 2 would be a pass loan as well?

Mr. STRANGE. Yes.

Mr. GIUFFRA. So you have three ratings for pass, and your first ratings was a 4 for substandard; is that right?

Mr. STRANGE. I believe that's right.

Mr. GIUFFRA. If there was no particular problem with the Clinton loan, why was it—

Mr. BEN-VENISTE. I think we've been calling it the Whitewater loan.

Mr. GIUFFRA. Why was concern expressed with regard to the absence of financial statements, the fact that there was a need to have the contracts maintained at your bank, and the fact that sales proceeds had to be applied to the note at the meeting on January 8, 1987? It was not a note that was perfectly clean, was it? It had some deficiencies; correct?

Mr. STRANGE. I don't know that those would be deficiencies. With the exception of the financial statement, they would be—

Mr. GIUFFRA. A regulator would flag a loan, if you didn't have a financial statement; right?

Mr. STRANGE. No. He would possibly list it as a deficiency but I don't know that the loan would be flagged.

Mr. GIUFFRA. You would argue that loan, absent the financial statements, would be a clean loan?

Mr. STRANGE. Yes.

Mr. GIUFFRA. The fact that it did not have the financial statements was a deficiency in the loan?

Mr. STRANGE. That is correct.

Mr. GIUFFRA. Now, Ms. Davenport, I'm sorry, you are now known as Ms. Eldridge—Davenport back in this period—you were a Senior

Vice President and then later an Executive Vice President at Twin City Bank?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. Did you have many dealings with regard to loans during the 1987-88 period with a balance of about \$50,000 at 1st Ozark?

Ms. ELDRIDGE. I didn't have any dealings with loans from 1st Ozark.

Mr. GIUFFRA. You were a friend of Ms. Clinton?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. Close friend; is that right?

Ms. ELDRIDGE. Good friend.

Mr. GIUFFRA. You were also on the Board of the ADFA organization, Arkansas Development Financial Authority?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. You were appointed by Governor Clinton?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. Did you ever contact Mrs. Clinton with regard to the Whitewater loan that was maintained at 1st Ozark?

Ms. ELDRIDGE. No, sir, I did not.

Mr. GIUFFRA. And are you certain that you did not contact Mrs. Clinton?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. If we could put up on the Elmo a document that bears Bates number House W/W report 9540. This is a document, across the top, it says Hillary Rodham Clinton and appears to be some note of Mrs. Clinton's, and then it says, "Notes, talk with M. Davenport." Presumably that's you.

Ms. ELDRIDGE. That's what it says.

Mr. GIUFFRA. Up in the right-hand corner, it says 1987.

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. There's a discussion and it says, "\$56,623 balance," and then it says below that, "\$2,303.78, October 3." Then it says, "5-year amortization with 2 years"—I can't really read the rest of it—"Note secured by mortgage received 3/18/78 on 171 acres known as Whitewater Estates. Originally \$121,000 note." Do you recall giving this information to Mrs. Clinton?

Ms. ELDRIDGE. No, sir, I do not.

Mr. GIUFFRA. It would appear from this note, in Mrs. Clinton's handwriting, that you did.

Ms. ELDRIDGE. I would like to point out to you at the top of the page where it says notes of a talk with M. Davenport, that's not the same handwriting as the rest of the—

Mr. GIUFFRA. Are you familiar with Mrs. Clinton's handwriting?

Ms. ELDRIDGE. I'm familiar with her signature, but I'm looking at the differences in the characters, and I believe that you will note that the ink is darker, the characters look different. And I don't have any knowledge that—

Mr. GIUFFRA. So what you're saying is you are absolutely certain you never spoke to Mrs. Clinton about this loan?

Ms. ELDRIDGE. I don't have any recollection.

Mr. GIUFFRA. You don't have a recollection but the only evidence we have is this document which has your name and a discussion of the loan. Now, Mr. Strange, the information that's contained on

this piece of paper appears to be about this particular Whitewater loan; right?

Mr. STRANGE. Appears to be, yes.

Mr. GIUFFRA. It appears to be correct information; right?

Mr. STRANGE. I have not gone back to research the exact balances and all, but I would think that it's close to being correct, the balance and all.

Mr. GIUFFRA. Now, Mr. Penick, did you ever ask Ms. Davenport to speak to Mrs. Clinton about the deficiency in connection with the Whitewater loan, and in particular, the absence of a financial statement?

Mr. PENICK. No, sir.

Mr. GIUFFRA. Do you have any recollection of doing so?

Mr. PENICK. I do not, no, sir.

Mr. GIUFFRA. Mr. Strange, are you aware of Ms. Eldridge being asked to do that?

Mr. STRANGE. No, I was not.

Mr. GIUFFRA. If we could put up on the Elmo the testimony of Mr. Proctor in his deposition, and I'll begin on page 55. Mr. Strange, who was Ronald Proctor? He testified here yesterday.

Mr. STRANGE. He was a loan officer with the bank, with 1st Ozark National Bank, and the primary officer handling this credit.

Mr. GIUFFRA. Mr. Vernon Dewey, who was he?

Mr. STRANGE. He was a junior loan officer, consumer loan officer with the bank, with 1st Ozark National Bank.

Mr. GIUFFRA. Why don't we first look to Mr. Proctor's testimony at his deposition.

Mr. STRANGE. Do we have a copy of that?

Mr. GIUFFRA. You should have it in your packets. We'll put it up on the Elmo.

The CHAIRMAN. Refer to it, please, by giving the page.

Mr. GIUFFRA. Pages 55 and 56.

Senator SARBANES. This is the Mr. Ronald Proctor who was here yesterday?

Mr. GIUFFRA. Correct.

Senator SARBANES. Is this from yesterday's transcript?

Mr. GIUFFRA. No, this is from his deposition.

Senator SARBANES. Was he asked about this yesterday?

Mr. GIUFFRA. I believe he was.

The CHAIRMAN. It's in his deposition.

Mr. GIUFFRA. I'll just read: "Question: Did anyone at—"

The CHAIRMAN. Wait a second. You have to put it up on the Elmo. Do we have it so we can put it up?

Mr. STRANGE. I don't believe I have a copy of it in the packet.

The CHAIRMAN. Do we have copies of this? Is this Mr. Proctor? So now everybody knows who Mr. Proctor is? Mr. Strange, do you know who he is?

Mr. STRANGE. Yes, I do.

Mr. PENICK. Yes, sir.

Ms. ELDRIDGE. Yes, sir.

The CHAIRMAN. All right. Let's go.

Mr. GIUFFRA. It says:

Question: Did anyone at 1st Ozark ever tell you that they had had contact with Margaret Davenport regarding the Whitewater loan?

Answer: No. It was my understanding that someone was going to speak with Margaret to help convey some information to Mrs. Clinton concerning the renewal of the loan.

Question: Who was that person?

Answer: That would have been Ed Penick, who was Chairman of our Board at that time.

Question: How did you come to know this?

Answer: This was discussed in a board meeting.

Question: Do you recall the date of that board meeting?

Answer: No.

Going down further.

Question: Can you explain the circumstances around Mr. Penick's inquiry?

Answer: We were having some difficulty getting financial statements, as we had often had with this loan. And we had asked—we had discussed that that was one of our deficiencies—not the only deficiency we had. But we were talking about deficiencies, the sensitive nature of the deficiency because of Mr. Clinton being the Governor. And Mr. Penick says, "Well, gosh, Margaret and Hillary are personal acquaintances. Let me ask and see if she can help you get the financial statement."

Mr. Penick, does this refresh your recollection about what might have happened back in 1987?

Mr. PENICK. No, sir.

Mr. GIUFFRA. Ms. Eldridge?

Ms. ELDRIDGE. I can assure you Mr. Penick did not ask me to speak with Hillary Clinton about financial statements.

Mr. GIUFFRA. Why don't you turn to the testimony of Mr. Dewey, page 28 of his deposition, May 3rd:

Question: Do you recall any discussions regarding the Whitewater loan that involved Mr. Penick?

Answer: Yes.

Question: Could you tell us about them?

Answer: I don't remember specifics, but I know that Ed was there, Ed Penick. Susan Sisk was there. Ron was there. I'm not sure Wes was. And we were discussing the financial statement on the Clintons. And Ed said that Margaret was personal friends of Hillary's and Susan said something to the effect that yes, she thought she was. Ed said that he would get Margaret to call Hillary and see if we could get a financial statement.

Question: Do you recall what financial statement, or when this occurred?

Answer: No, I don't. This is a memory in my head.

Question: Do you know if Mr. Penick asked Davenport to get a financial statement?

Answer: No, I don't.

Question: Do you recall if the financial statement was obtained?

Answer: I do not recall getting a financial statement.

Now, Mr. Strange, do you recall being at a meeting where Ms. Eldridge was going to be asked to get a financial statement from Mrs. Clinton?

Mr. STRANGE. I do not remember such a meeting.

Mr. GIUFFRA. Mr. Penick, again?

Mr. PENICK. No, sir.

Mr. GIUFFRA. Ms. Eldridge?

Ms. ELDRIDGE. I'll state again, Mr. Penick never asked me anything about a financial statement for Hillary Clinton.

The CHAIRMAN. Mr. Penick, would Mr. Proctor have any reason to make this up?

Mr. PENICK. I'm sorry, Senator, I didn't understand you.

The CHAIRMAN. You've read both the testimony and had it read to you by both Mr. Proctor and Mr. Dewey. You know these men, don't you?

Mr. PENICK. Yes, sir.

The CHAIRMAN. Do you know them to be honorable men?

Mr. PENICK. As far as I know, yes, sir.

The CHAIRMAN. Would they have any reason to make up this statement, or is it just a question that you don't recall?

Mr. PENICK. I don't recall. I remember being at a meeting where I volunteered to contact Mrs. Clinton and try to get the financial statement, which I did.

The CHAIRMAN. Would it be reasonable for both Mr. Dewey and Mr. Proctor to have a more specific memory that you said specifically, that you knew Margaret to be a friend of Mrs. Clinton and you would contact her?

Mr. PENICK. I don't recall talking about Margaret at that meeting, no, sir, or any other meeting.

The CHAIRMAN. Could you have?

Mr. PENICK. It's possible but I don't recall it.

The CHAIRMAN. OK. Now, we're making some progress—do you know Margaret Eldridge?

Mr. PENICK. Yes, sir.

The CHAIRMAN. She was an employee of yours at that time?

Mr. PENICK. I was not her supervisor, no, sir. She worked for Twin City Bank.

The CHAIRMAN. Did you know that she had a personal relationship with Mrs. Clinton?

Mr. PENICK. I knew she was a friend of Mrs. Clinton, yes, sir.

The CHAIRMAN. Thank you.

Mr. GIUFFRA. Ms. Eldridge, while you were at Twin City Bank, did you ever lobby Governor Clinton or a member of his staff?

Ms. ELDRIDGE. Lobby?

Mr. GIUFFRA. Yes.

Ms. ELDRIDGE. No, sir.

Mr. GIUFFRA. Did you ever attempt to arrange meetings between senior bank officers and the Governor or members of his staff?

Ms. ELDRIDGE. In my deposition, there were some notes that showed that I arranged for a luncheon with Betsey Wright and Terry Renaud.

Mr. GIUFFRA. Do you recall arranging that luncheon?

Ms. ELDRIDGE. I remember arranging a luncheon with Terry Renaud and Betsey Wright. I didn't recall, and I still don't recall, the content of the meeting.

Mr. GIUFFRA. Mr. Renaud, was he your boss?

Ms. ELDRIDGE. Right.

Mr. GIUFFRA. He was the Chairman of the bank?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. Betsey Wright was Chief of Staff of the Governor?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. You don't recall anything more about this particular meeting?

Ms. ELDRIDGE. No, sir.

Mr. GIUFFRA. Let's put on the Elmo JRTS 2. What I would like to do now is go through some of the history of the 1988 bank branching legislation. This document was produced to the Committee by Mr. Tisdale, Document Custodian for the Gubernatorial papers. And it notes Sam Bratton, then Counsel to the Governor and a member of the Governor's staff was most involved in banking legislation.

Now, Mr. Penick, did you know a man named Bo Carvill?

Mr. PENICK. Yes, sir, I know Mr. Carvill.

Mr. GIUFFRA. At this period in 1988, was he the head of the Arkansas Bankers Association?

Mr. PENICK. I believe he was Executive Director, yes, sir, of the Arkansas Bankers Association.

Mr. GIUFFRA. Who is Mr. Hartsfield?

Mr. PENICK. Mr. Hartsfield, President of a bank in Searcy.

Mr. GIUFFRA. Was he Senior Officer of the Bankers Association?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Again, the Bankers Association was probably the preeminent trade association for banks in Arkansas?

Mr. PENICK. It had the greatest number of members, yes, sir.

Mr. GIUFFRA. Do you recall discussing with either Mr. Carvill or Mr. Hartsfield Twin City's position with regard to whether there should be a special legislative session to consider banking legislation?

Mr. PENICK. I did probably discuss it with both of them, yes, sir.

Mr. GIUFFRA. This memo says "BC/Bo Carvill, W. Hartsfield." This is a meeting held on January 25, 1988. It states on the first line, "Opposition—TCB, Walton Banks, Union, maybe Bowen—said his will probably oppose." This is a question as to whether there should be a special session. Do you recall Twin City Bank being opposed to a special session of the legislature back in January 1988, as reflected in this note of Mr. Bratton?

Mr. PENICK. No, sir. Our reservation at the time was, as I testified to I think earlier, that there was a provision—

Mr. GIUFFRA. This is the 300-foot provision?

Mr. PENICK. Yes, sir. And we weren't opposed to the legislation, but we were opposed to any legislation that would have that restrictive provision in it.

Mr. GIUFFRA. Let's put up another document from Mr. Tisdale. It bears Bates number 496. This is a note from Ms. Wright to Governor Clinton dated 4/19/88. Ms. Eldridge, this memo reflects the lunch that you had arranged with Mr. Renaud.

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. I'll just read some of the memo. It begins, "I had lunch with Terry Renaud and Margaret Davenport today." Then going down to the bottom of the first paragraph, "I knew that if Terry Renaud asked her to set up the lunch with me, I had to do it for her." You had been considered for Bank Commissioner, I gather; right?

Ms. ELDRIDGE. Yes, sir.

Mr. GIUFFRA. Now in the third full paragraph, it says:

1. Terry says there is no way to declare this a 'State' emergency. Most of the elements of the Omnibus Bill will pass in the January session regardless of the State-charted S&L issue.

Then going down,

4. Terry says if he were in an S&L, he would move in with resentment that bankers were utilizing one of their provisions to bargain their own deal.

Then there is a discussion of the dual-banking system. On the next page:

6. He, and he says other like-minded bankers, are unwilling to be overt in opposition to this bill; he doesn't oppose it. He says there is no emergency and it will be a donnybrook, no matter how many legislators say they are for the bill.

8. He is fearful that a donnybrook in a visible special session will seriously impair what he believes the big crisis to banks to be: going to the people to change the usury rate.

Do you recall this lunch at which Mr. Renaud indicated to Ms. Wright that the Governor should not call a special session?

Ms. ELDRIDGE. Sir, I don't remember the content of the luncheon. It was my responsibility to arrange the luncheon. If you'll notice, I am not quoted in there anywhere.

Mr. GIUFFRA. You attended the luncheon?

Ms. ELDRIDGE. I attended the luncheon.

Mr. GIUFFRA. Mr. Penick, did you discuss with Mr. Renaud his opposition to a special session?

Mr. PENICK. I can't recall.

Mr. GIUFFRA. Was he looking forward to the special session? Was it something he was encouraging, or was Twin City Bank opposed to the special session? You had gotten what you wanted the prior year, you had gotten the branching into Little Rock; correct?

Mr. PENICK. No, no, sir.

Mr. GIUFFRA. Was Twin City Bank in favor of the special session in April 1988?

Mr. PENICK. I think we were favorable to a special session if it would help break down the banking branch restrictions.

The CHAIRMAN. The light is on.

Mr. GIUFFRA. I'll come back to this.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. If there is a notion here that a special session called in 1988 was a quid pro quo for extending a 1987 loan. A loan that had been on the books since 1978, had been paid down from \$186,000 to \$36,000. Maybe somebody here could answer that question directly, if that seems to be a point of relevance.

Is there some connection between the 1988 special session of the legislature of Arkansas and the 1987 extension of the Whitewater loan in your view, Mr. Strange?

Mr. STRANGE. None.

Mr. BEN-VENISTE. Mr. Penick.

Mr. PENICK. No, sir, not in the least.

Mr. BEN-VENISTE. Do you have any idea of what connection that could be, Ms. Eldridge?

Ms. ELDRIDGE. I don't have any idea what connection this has with anything.

Mr. BEN-VENISTE. Ms. Eldridge, you indicated that you did not contact Ms. Clinton about providing a financial statement. Are you quite clear in your recollection?

Ms. ELDRIDGE. Yes, sir, I'm very clear in my recollection.

Mr. BEN-VENISTE. Mr. Penick, you are quite clear in your recollection that you did contact Mrs. Clinton?

Mr. PENICK. I know I wrote a letter, yes, sir, to Mrs. Clinton.

Mr. BEN-VENISTE. Ms. Eldridge, was it common knowledge, in the bank in 1987, that you were friends with Mrs. Clinton?

Ms. ELDRIDGE. Yes, sir.

Mr. BEN-VENISTE. So is it possible that Mr. Proctor, heard about that connection and having heard there was a request for a financial statement, that he may have thought erroneously that you were the person to contact Mrs. Clinton?

Ms. ELDRIDGE. I can't comment on Mr. Proctor's thoughts.

Mr. BEN-VENISTE. What any of this has to do with the price of beans certainly mystifies me as it relates to who might have contacted Mrs. Clinton to provide a financial statement which was provided and yet it was unnecessary in terms of the approval of this loan which had been paid down to this magisterial sum of \$36,000.

Senator SARBANES. Was this loan paid off, eventually?

Mr. PENICK. Yes, sir, it was.

Senator SARBANES. In its entirety?

Mr. PENICK. Yes, sir, all principal and interest was collected.

Senator SARBANES. All the interest was paid on it as well?

Mr. PENICK. That's correct.

Senator SARBANES. In this period they're asking about, what was the amount of the loan?

Mr. STRANGE. Roughly \$36,000 as I recall.

Senator SARBANES. What was it at the outset?

Mr. STRANGE. \$180,000-plus.

Senator SARBANES. So at this point it had been paid down from \$180,000 to \$36,000?

Mr. STRANGE. That's correct.

Senator SARBANES. Subsequently it was completely paid off?

Mr. STRANGE. Yes.

Senator SARBANES. All the interest accruing to it was paid?

Mr. STRANGE. That's correct, yes.

Senator SARBANES. Thank you.

Mr. BEN-VENISTE. I'd be prepared to cede back the time to see whether we can develop some relevance to this.

The CHAIRMAN. I think there is some relevance here. Let me tell you, this is not just in a vacuum. I'm not saying that anything was done more or less than what Mr. Proctor and what Mr. Dewey have said. It seems to me their testimony has not been refuted. What we have is a case where you, Mr. Penick, say you don't recall. You think they made this up, the fact that you said we'll get hold of Margaret and have her call? Do you think they really made that up, both of them independently, each of them being deposed independently?

Mr. PENICK. No, sir, I don't think so, but it would be abnormal for them to be in a meeting where I was at the bank. I was Chairman of the Board of the bank and was not a member of the officers loan committee or directors loan committee, and rarely would they come to—it's possible, but rarely would those two junior officers come and talk about a loan to the full board.

The CHAIRMAN. Maybe because it was a loan you were concerned about, there was some relevance. Maybe you were concerned, that given the fact that it was the Governor and you didn't want to press him—how do you press and say we need this personal thing and we don't want this red flag to stand up? The fact of the matter is that you did have a relationship with the Governor, didn't you, and no one says that's wrong but you had a relationship?

Mr. PENICK. Yes, sir, I knew—

The CHAIRMAN. My gosh, you knew him from your work with the chamber, and banking legislation, et cetera. I think we become so defensive. Wouldn't you be concerned? Isn't it a difficult thing to approach someone in a high position, even if you have a relationship? To say look, we need your financial documents. We need it because this loan wasn't in compliance. You had to have that particular financial statement and that's a fact.

We had both Mr. Proctor and Mr. Dewey, and they're junior officers, saying they have a problem. Pretty logical as to why they would bring it up and say this is a problem. You say, OK, we'll see if we can't get it. And the information did come. But it is relevant and it is not something that someone mystically created. We didn't create it. It happened.

Now let's keep going.

Mr. GIUFFRA. Mr. Strange—

Senator SARBANES. I just want to be clear, Mr. Penick. As I understand it, you did contact Mrs. Clinton about providing this statement; isn't that right?

Mr. PENICK. Senator, I did write her a letter.

Senator SARBANES. So you don't dispute that?

Mr. PENICK. No, sir, never have.

The CHAIRMAN. And there's no reason to dispute or suggest that these two men who you knew to be honorable employees, you never had any difficulty with them, did you, with Mr. Dewey?

Mr. PENICK. No, sir, I did not. Never have.

The CHAIRMAN. Does he still work there? I don't know whether he does or not.

Mr. PENICK. I don't know—

Mr. STRANGE. He does not.

The CHAIRMAN. You never had any problem with him in terms of his honesty, ethical conduct or anything, did you, Mr. Strange?

Mr. STRANGE. No.

Senator SARBANES. Did you say that he does or doesn't work there now?

Mr. STRANGE. He does not.

Mr. BEN-VENISTE. Mr. Chairman, maybe one thing could be clarified as to where they work. I know there's an implication that they worked in the same building or the same town or locale.

The CHAIRMAN. But the fact is he testified that he was there and that Ed brought this up and they both remember this with specificity. Now, you don't recall it, and that's OK, but to suggest that somehow these fellows just invented this, when they had no reason to invent this.

Ms. Eldridge, you were a friend of Ms. Clinton's; isn't that true?

Ms. ELDRIDGE. Yes, sir.

The CHAIRMAN. Let's continue.

Senator SARBANES. I think Ms. Eldridge said that she never discussed this with Mrs. Clinton, didn't you?

Ms. ELDRIDGE. That's exactly right.

Senator SARBANES. Well, these fellows may have thought that Mr. Penick was going to get Ms. Eldridge to do it. Apparently Mr. Penick wrote her a letter himself.

The CHAIRMAN. From the testimony of these two gentlemen yesterday, Mr. Proctor and Mr. Dewey, Mr. Penick said at this meet-

ing, this was a conversation that took place, and there was some concern. My gosh, the facts are irrefutable, that that financial documentation was not there; is that correct? It wasn't there; is that correct?

Mr. PENICK. Yes, sir, that's correct.

The CHAIRMAN. It had come in late on a number of prior occasions. It took a little bit of doing to get it there; is that correct, Mr. Penick?

Mr. PENICK. I did not administer the loan. No, sir, I don't know.

The CHAIRMAN. That's the testimony—

Mr. BEN-VENISTE. Mr. Chairman, I thought Mr. Proctor's testimony was that no one told him that such a contact had been made. He understood that there was a friendship, and it had been discussed, but not that somebody told him Ms. Eldridge had contacted Mrs. Clinton.

The CHAIRMAN. Mr. Ben-Veniste, I understand that, but what we have are two junior officers who the pressure was on to see to it that the documentation was in, not only in this case but also in all of the matters that they had, because the regulators were cracking down. They were going from, you might say, business, do whatever you want to, to coming in looking and supervising in a much tighter manner. That was the history of what was taking place, and not just at your institution.

So the fact of the matter is this was obviously a concern. Otherwise you wouldn't have written a letter, would you, Mr. Penick? You don't generally write letters to people to say get your financial documentation in, did you?

Mr. PENICK. Yes, sir.

The CHAIRMAN. You did?

Mr. PENICK. Yes, sir.

The CHAIRMAN. That was a general thing that you did?

Mr. PENICK. Where I could help provide document—

The CHAIRMAN. Where you could help? It wasn't a general policy for you to do that. Didn't your junior loan officers and other people do that? Don't stretch the imagination now.

Mr. PENICK. Senator, I'm explaining. If I could assist with documentation, I would be pleased to do so.

The CHAIRMAN. If you could assist. It wasn't a general practice for you to be the person to indicate to someone that they didn't have loan documentation in, was it?

Mr. PENICK. No, sir, it was—

The CHAIRMAN. OK.

Senator SARBANES. Let him finish.

The CHAIRMAN. I let him finish.

Senator SARBANES. Let him finish.

The CHAIRMAN. Wait a minute, Senator. On your time do your thing. Don't tell me how to conduct myself. He knows he's pushing that point.

Senator SARBANES. Well—

The CHAIRMAN. It was not a general practice for you to send a letter to people who were delinquent, as it related to their financial statement. That you, as the Chairman of the Board, got on the phone or sent a letter out? Was it a general practice? Yes or no?

Mr. PENICK. No, sir.

The CHAIRMAN. Thank you. We didn't have to go through all that. If you had been more responsive, I wouldn't have to do that. I asked you that before. Save it for your counsel. Don't play games with us.

Mr. PENICK. I am not, Senator, I am just trying to tell you the truth.

The CHAIRMAN. Wait a minute, Senator, you can make your observation on your time.

Senator SARBANES. I'm not going to sit here and let you browbeat the witness. Let him give a complete answer.

The CHAIRMAN. You know something, Senator, the fact of the matter is we have gone through this now. If he had been responsive instead of trying to hedge and said well, when I can be of assistance, you knew what we were getting at.

Senator SARBANES. If I was being browbeaten this way, I would be very careful about my answer too. I think this witness ought to be given a chance to develop a fuller answer if he wants to do so.

The CHAIRMAN. And he has been.

Senator SARBANES. No, he hasn't. He has been denied that just now. There's no question about that.

The CHAIRMAN. Senator, that's your interpretation.

Senator SARBANES. I think that it's the interpretation of anyone watching this proceeding.

The CHAIRMAN. I'll tell you something. Anyone watching the proceeding would see that there have been less than candid responses, testifying to the whole truth instead of attempting to play games.

Senator SARBANES. I don't think they're trying to play games. They're trying to give straight answers.

The CHAIRMAN. No, I don't think so. I think there has been a holding back in a number of cases and it was totally unnecessary. It is not a fair and accurate response for somebody, the Chairman of the Board, or the President, to say or imply that he would regularly send out these notifications when, indeed, it was only in special circumstances. Let's not kid ourselves.

Senator SARBANES. Let him answer that question.

The CHAIRMAN. When you get to it on redirect, you can do that.

Senator SARBANES. I certainly will, but I do think, Mr. Chairman, in all fairness you should do that when you're asking the questions yourself. I mean, this notion, well, I'm going to shout at him and browbeat him and cut him off, and then when you get your turn, they can have a chance to answer the question.

The CHAIRMAN. Well, you know, Senator, you are doing that to me. I do not do that to you, and when the witness—

Senator SARBANES. On occasion, Mr. Chairman. On occasion.

The CHAIRMAN. Well, on occasion, but you do it more regularly and I don't think it's necessary. I said to the witness before, let's be a little more forthcoming. He did it with the business about the 300 feet, I would suggest he was playing games and he is playing games. I characterize it as playing games and being less than fully responsive to the questions.

Mr. Giuffra.

Mr. GIUFFRA. Let's go back to the 1988 branching legislation. We know on January 25, 1988, there was a meeting with Governor Clinton, Mr. Carvill, and Mr. Hartsfield of the Bankers Association

in which, at least according to Mr. Bratton's notes, it indicates the Twin City Bank was opposed to the special session that would consider the Omnibus Bank Bill.

Then we have this luncheon on April 19, 1988, arranged by Ms. Eldridge, at which the Chairman of Twin City Bank, Mr. Renaud, attends a meeting with the Governor's Chief of Staff and indicates that Twin City would prefer that the Governor not declare a special session to consider this Omnibus Bank Bill.

Let us turn to another document. Let us turn to the document bearing Bates number JRTS 491. This is a "Memorandum—From: Sam Bratton. To: Governor/Betsey Wright. Date: April 25, 1988. Subject: Special Session." It says:

Bowen called this morning to inquire about as to what I thought were the possibilities for a special session. His assessment based on discussions primarily with First Commercial's correspondent banks is that an overwhelming majority of the banks out in the State are expressing support for the proposed legislation, but that many of them are "paying lip service" to agreeing and continue to gripe about various specific provisions of the bill and that most of them are not really working that hard on their legislators.

This is the key sentence:

He also said it was his impression that TCB [Twin City Bank] is attempting "to be a spoiler."

Again, Mr. Penick, is that accurate? This rendition from the Governor's Counsel to the Governor and the Governor's Chief of Staff, that Twin City Bank was attempting to be a spoiler with regard to the Omnibus Banking Bill in 1988?

Mr. PENICK. No, sir, I didn't view our position that way at all.

Mr. GIUFFRA. Let's turn to the next document which is another document from Governor Clinton, JRTS 142. This is a letter from Mr. Penick to Marlin Jackson. Do you have that letter, sir?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Do you recall writing this letter to Mr. Jackson?

Mr. PENICK. I'm sorry, I have the wrong letter.

Mr. GIUFFRA. This is the May 23, 1988 letter.

Mr. PENICK. I found it, yes, sir.

Mr. GIUFFRA. Do you recall writing this letter to Mr. Jackson?

Mr. PENICK. Yes, I do.

Mr. GIUFFRA. Mr. Jackson at this point is at First State and Bank Trust Company in Conway, Arkansas according to your letter; is that right?

Mr. PENICK. I assume so.

Mr. GIUFFRA. He had formerly been the Bank Commissioner?

Mr. PENICK. That's right.

Mr. GIUFFRA. Why did you write the letter to Mr. Jackson?

Mr. PENICK. This is a letter that went to all bankers in the State. It was stating our position with respect to the special session, and the bill that was going to be call the Omnibus Banking Bill.

Mr. GIUFFRA. Let's look at the second full paragraph, I'll read that into the record. "TCB does not oppose the bill. Our reluctance is based on the effect of one part of the bill that seems directed solely at us and this litigation." Now what was the part of the bill that you thought was directed solely at Twin City Bank?

Mr. PENICK. This was the litigation we spoke of earlier, about First Commercial objecting to our branch which was in 300 feet, which was passed and permitted within Act 539.

Mr. GIUFFRA. Your main concern, as expressed in this letter, was this 300-foot branches limitation; is that right?

Mr. PENICK. Yes, sir, we didn't oppose the bill.

Mr. GIUFFRA. I will read the last paragraph, the second page of the letter. You are proposing some legislative language to Mr. Jackson; right?

Mr. PENICK. Yes, sir, and others that received the letter.

Mr. GIUFFRA. It reads:

As initially stated in this letter, TCB wants to support the proposed bill. However, we must have reliable assurance that the wording 'grandfathers in' any operating branch. We appeal to your sense of fairness and ask for your support to enable TCB to fully and actively support this bill by contacting your legislators and securing their commitment to adopt a grandfather provision that states.

Then it provides the grandfather provision; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. Again, your concern is you really need this one specific provision that will allow your bank to keep its branch in the Capitol Building?

Mr. PENICK. Yes, sir. There were other branches too that may or may not be in jeopardy that we were operating. We were trying to grandfather all of them in that were passed under 539.

Mr. GIUFFRA. You were looking for a specific provision that would grandfather your bank?

Mr. PENICK. We wanted that in the bill; we thought it was fair, yes, sir.

Mr. GIUFFRA. Let's turn to a document, JRTS 141. We looked at this document before the lunch break. This is the note that was sent to Governor Bill Clinton. The Chairman focused your attention on the first paragraph; I would like to focus your attention on the second paragraph.

Mr. PENICK. Mr. Giuffra, which one are you talking about?

Mr. GIUFFRA. I'm talking about the June 6, 1988 note.

Mr. PENICK. The date on our copy is illegible. Is this it?

Mr. GIUFFRA. This is another document we received from Governor Clinton's files. This is the document that says:

Bill, the attached copy is revised slightly from the previous one you have been furnished. I've highlighted the two changes for your information.

In an additional note, on 6-1, the Arkansas Association of Bank Holding Companies Board of Directors adopted this position. A formal notice will come from that organization shortly.

Do you recall trying to get support of the Arkansas Association of Bank Holding Companies for your particular grandfathering provision?

Mr. PENICK. I think they were pretty supportive of the bill that we were trying to get passed, yes, sir.

Mr. GIUFFRA. Do you recall the Association of Bank Holding Companies was willing to support your provision which would be this grandfathering of banks within 300 feet?

Mr. PENICK. I don't specifically recall, no, sir.

Mr. GIUFFRA. But doesn't this letter suggest that you had gone out and gotten the Association to support this particular provision?

Mr. PENICK. Well, I don't know that that provision is what's referenced in this note.

Mr. GIUFFRA. This was the only provision, according to your letter to Mr. Jackson, and to other bankers, as you testified on May

23rd. You indicated that your concern with this legislation was with regard to this 300-foot branch restriction; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. So the next letter, less than 2 weeks later, to the Governor, talks about the provision that you wanted in the bill and how the Association of Bank Holding Companies was supporting your position with regard to presumably the 300-foot branch restriction.

Now on 7/5, we have the handwritten note that you were unsure as whether it went to Governor Clinton, but you thought it had gone to the Bank Commissioner. Then on 7/5, we have the note JRTS 195 and let's put that back up. That's the memorandum from Betsey to the Governor dated July 5, 1988. Re: Bankers Bill. cc: Sam Bratton, who was the person at the Governor's office responsible for this particular piece of legislation.

I think this is a very important memo to look at, because this memo read in connection with the handwritten note dated the same date of 7/5 in which you thank Bill, and we don't know who Bill is—although the only document we got was from Governor Clinton's files.

It has been reported to me your assistance on the Omnibus Bankers Bill and the 300-foot provision and I wanted to relay our appreciation for taking this stand. Terry and I can't understand why Mr. Bowen [your competitor from First Commercial] feels so threatened by our little office in Capital Tower.

Then on the same day, we have this memo from Betsey to the "Gov" which says:

Neither Sam nor I understands what your next step/follow-up with Bill Bowen is on the 300-foot issue.

The bill which is being delivered to this office in the morning by the Bankers Association/Bill Ford does *not* contain the 300-foot provision based on their conversation with you this morning.

This memo, by any reasonable measure, seems to indicate that Governor Clinton spoke to the Bankers Association and/or the Bank Commissioner and told them that he did not want the next version of the Omnibus Bank Bill to contain the 300-foot limitation. Isn't that the most fair reading of this particular memo, sir?

Mr. PENICK. Would you state that again? I'm sorry. I didn't follow it.

Mr. GIUFFRA. Let's focus on the last sentence of the memo.

The bill which is being delivered to this office in the morning by the Bankers Association/Bill Ford does *not* contain the 300-foot provision based on their conversation with you this morning.

This is a memo from Betsey Wright to Governor Clinton. The only reasonable interpretation of that sentence is that Governor Clinton spoke to the Bankers Association and/or the Bank Commissioner, Mr. Ford, and told him he did not want the new version of the Omnibus Bank Bill to contain the 300-foot provision; right?

Mr. PENICK. Yes, sir, I think that would be consistent with my handwritten note, I assume it to be to Bill Ford on July 5th.

Mr. GIUFFRA. The point is—I know Mr. Ben-Veniste is giving us side chatter.

The CHAIRMAN. Now wait. Mr. Ben-Veniste is not. That's not right. We are over time. Continue. Make your point.

Mr. GIUFFRA. The point is this memo clearly demonstrates that the Governor did intervene to remove the 300-foot provision from

the legislation as your bank wanted. And your bank was the only bank that was going to benefit from the elimination of this provision. I mean, this was the thing you had been lobbying for starting in January. You had written a letter to every banker in the State about this provision on May 23, 1988, and then by July 5th, the Governor has taken care of it for you.

Mr. PENICK. That's not the way I interpret it, no, sir.

The CHAIRMAN. You can interpret it and then we are going to go to Mr. Ben-Veniste. If you have some kind of interpretation, Mr. Penick, that can clear it up, you can tell me, because I am lost.

Mr. GIUFFRA. Let's turn to another document.

The CHAIRMAN. No, wait. I am going to do this now.

Senator Sarbanes.

Senator SARBANES. Mr. Penick, Mr. Strange, how many times did this loan get extended? When did it first get extended? It was extended every year; wasn't it, wasn't that the way it worked?

Mr. STRANGE. I don't recall the exact number of times. It was extended numerous times over the life of the loan, thought.

Senator SARBANES. Before we reach this point that we are talking about here, this loan had been extended previously more than once, in fact, a number of times; is that correct?

Mr. STRANGE. Yes, that would be right.

Senator SARBANES. On the previous occasions when it was extended, was there legislation in the Arkansas legislature that involved your bank and the Governor?

Mr. STRANGE. Not that I am aware of.

Senator SARBANES. No, I mean, what's being more than just suggested here is that this loan got extended in this year because of this legislation that was pending. Now was there any connection between the extension of the loan and the legislation?

Mr. PENICK. Absolutely not.

Mr. STRANGE. None, none that I know of at all.

Senator SARBANES. No basis on which to assert that, is there?

Mr. STRANGE. There is none.

Mr. PENICK. Not to my knowledge, no, sir.

Senator SARBANES. In fact the extension of the loan was handled, as in the past, separately; and I take it according to however you tried to do those things. This legislation was something that came up in this particular instance but hadn't been present before; isn't that correct?

Mr. PENICK. I believe so, yes, sir.

Senator SARBANES. Well, you know, I mean, they can go round and round about this thing and try to establish some linkage; but I don't see it. And I don't know how long we are going to spend sort of on this ring-around-the-rosey.

Now, Mr. Penick, I didn't think you had a chance to fully respond earlier on this volunteering to help collect documents for a credit file. Was that something you did on occasion?

Mr. PENICK. Yes, sir, I did, but it was not a general practice.

Senator SARBANES. Not a general practice, but do you recall other instances in which you did it?

Mr. PENICK. Oh, yes, sir. Yes, sir. I was on numerous loan committees, and if it was a situation where I could assist, I volunteered

to do that. It was not a general practice, I did not do it every day, but I did it, and it was not just done in this situation.

Senator SARBANES. In fact, in your deposition, you were asked:

Question: Was this the first time you had volunteered to help collect documents for a credit file?

Answer: No, sir.

Question: Do you recall the other instances in which you did it?

Answer: They are too numerous to recall.

Question: So you had done it previous to this.

Answer: I'm sorry. I didn't hear you.

Question: So you had previously volunteered to help collect documents for a credit file?

Answer: Yes, sir.

Mr. PENICK. That's correct.

Senator SARBANES. Well, I think that's important. You didn't do it in every instance, or it wasn't a standard practice, but you did it often enough that it constitutes a number of times in which you engaged in such activity; is that correct?

Mr. PENICK. Yes, sir, it was.

Senator SARBANES. Is that a fair way to put it?

Mr. PENICK. That's fair, yes, sir.

Senator SARBANES. Now is there anything you want to add at this point?

Mr. PENICK. No, sir, that concludes it.

Mr. BEN-VENISTE. From 1978 through 1987, that's 9 years, you go forward, rolling this loan over, as we heard, on 6-month or a year basis because that's the way things were done in Arkansas at that time, in order to deal with interest rate fluctuations. Suddenly, the notion has been advanced that in 1987, there was a required trade between support by the Governor for branch banking legislation—passed 80 to 10 by the legislature—and getting still another loan renewal. By this time, the loan was paid down to \$36,000—the sales from the lots and the contracts, fully servicing the payments on the loan, and the loan being further collateralized by the remaining lots in the Whitewater Development parcel; is that fair to say?

Mr. PENICK. Yes, sir.

Mr. BEN-VENISTE. Mr. Strange.

Mr. STRANGE. Yes.

Mr. BEN-VENISTE. It is interesting that the document regarding your recollection of who it was you were writing to when you wrote to "Bill, it has been reported to me that your assistance on the Omnibus Bankers Bill and the 300-foot provision, and I wanted to relay my appreciation for taking this stand." It is dated July 5, 1988.

The memorandum which Mr. Giuffra just alluded to, from Betsey Wright to Governor Clinton, regarding the Bankers Bill is dated exactly the same day, July 5, 1988. And that memo says, "the bill which is being delivered to this office in the morning by the Bankers Association/Bill Ford does not contain the 300-foot provision based on their conversation with you this morning."

Therefore, the notion that the tie-in between your letter of appreciation to Bill Ford, the Commissioner, who took a position with respect to the 300-foot question, whatever the heck that means, in terms of the price of beans, of what this Committee is supposed to

do, at any event, leads you further to conclude that your note was written to Bill Ford; is that right?

Mr. PENICK. That's correct, yes, sir.

Mr. BEN-VENISTE. I have nothing further.

Mr. GIUFFRA. Let's put up on the Elmo documents bearing Bates number JRTS 204 and 205. Mr. Penick, you will agree that 300-foot branching restriction was important to Twin City Bank; right?

Mr. PENICK. I'm sorry, we don't have the document yet.

Mr. GIUFFRA. We will get it to you—204 and 205. It is a letter from Mr. Bowen of First Commercial to Governor Clinton.

Mr. BELMAN. Counsel, do you have a date for the document?

Mr. GIUFFRA. This is the July 7, 1988 letter.

The CHAIRMAN. He is giving it to you right now.

Mr. GIUFFRA. Mr. Penick, let's go back to a question first. You have the letter in front of you?

Mr. PENICK. Yes, I do.

Mr. GIUFFRA. Now, you will agree that the 300-foot branching restriction was a concern to Twin City Bank; right?

Mr. PENICK. It was important, yes, sir.

Mr. GIUFFRA. It was important to you. Now, you had even taken the step of writing a letter to other bankers throughout the State, including Mr. Jackson, seeking a grandfather provision so that you could keep your branch open in Capital Tower; right?

Mr. PENICK. And other branches that might come in—

Mr. GIUFFRA. Other Twin City branches?

Mr. PENICK. That's right.

Mr. GIUFFRA. You had even been in litigation with First Commercial with regard to the Act 539; right?

Mr. PENICK. We were operating the branch and First Commercial sued us to stop it.

Mr. CHERTOFF. Mr. Penick, you know what the problem is here? The problem is that it is hard to get a simple answer to a simple question. Let me be very simple. There was a case going on that everybody in that area in banking knew about. It is discussed in the letter to the Governor by Mr. Bowen, the Chairman of your competitor, that makes it clear that there is an ongoing case challenging this home-rule provision. Depending on the outcome of the case, you are either going to get to keep your branch there or you are going to have to move your branch.

This is not a matter of great momentous policy. There are no economic policy questions. It is a matter of pure personal interest to the two banks that are involved in the litigation: Your bank, which didn't want to have to close up shop in its office here and move outside of the 300 feet, and the bank of the competitor that wanted you to move.

And the letter on July 7, 1988, to the Governor from Mr. Bowen makes it very clear that the whole function of this part of legislation on the 300 feet is to address this case which is going on, because if they wind up changing the law, and they repeal or repudiate the home office protection feature, the case is going to go away, and you are going to have to move your branch. Isn't that really what this letter is about? Isn't that what this whole deal was about during the first 6 months of 1988?

Mr. PENICK. Well, the thrust of the litigation was primarily a Constitutional issue.

Mr. CHERTOFF. The thrust of the litigation for you was not an abstract interest in the Constitution of the State of Arkansas; it was your business. You had a branch, you were being challenged on the location of that branch; your competitors wanted you to move your branch; you wanted to keep your branch. That's what the case was about to you; right?

Mr. PENICK. No.

Mr. CHERTOFF. No, it was about Constitutional theory; right?

Mr. PENICK. That's correct.

Mr. CHERTOFF. Now let's take this letter of July 7th. You may be interested in Constitutional theory but your competitors and the ABA and these other individuals from the banks, seemed to be interested in the practical element, as one would expect. They seemed to be interested in this particular case, and this particular rule that I gather protects banks in their home offices. Now as a matter of fact, this was a personal concern to you because you actually had a minority interest in the very building in which this particular branch that was the subject of the case was located; right?

Mr. PENICK. That is correct. But it was an easy solution, just move it back more than 300 feet in the building.

Mr. CHERTOFF. In addition to your interest in this as the Chairman of the TCB, you had an interest as an owner of the building; is that right?

Mr. PENICK. I was a minority owner of the building, yes, sir. I have testified to that.

Mr. CHERTOFF. You had a piece of the building. Now what seems interesting about this—and Mr. Ben-Veniste kind of alluded to it—I mean, we are now in, I guess, what is essentially the end of the first decade of the existence of this loan. This loan was on the books, started out in 1978. We heard the whole story about how the loan in the predecessor bank was originally split. And it turned out that the downpayment was really borrowed. There were all kinds of—you know, part of it was repaid and part of it wasn't repaid. Now 10 years into this loan, you had become a Federally-chartered bank; right?

Mr. PENICK. Is the question to me, Mr. Chertoff?

Mr. CHERTOFF. Yes, the question, Mr. Penick, was you had become a Federally-chartered bank?

Mr. PENICK. "You" being whom?

Mr. CHERTOFF. I mean, 1st Ozark.

Mr. PENICK. Yes, sir, we converted to the charter to a national charter.

Mr. CHERTOFF. When did that happen?

Mr. PENICK. I'm not sure.

Mr. STRANGE. January 1, 1986.

Mr. CHERTOFF. That means, Mr. Strange, the Office of the Controller of the Currency gets involved in examining the bank; right?

Mr. STRANGE. That's correct.

Mr. CHERTOFF. We heard testimony from Mr. Proctor yesterday that they tended to be a little more rigorous, let's say, in the way they looked at loan documentation issues. So now, for the first time, 8 years into the life of this loan, there is a new regime, there

are new regulators. We have a loan that Mr. Proctor and Mr. Dewey acknowledged yesterday was the subject of discussion in the bank. I think Mr. Dewey said it was kind of a nuisance loan, there were problems with the loan.

Then in 1987, there was a significant effort to get that financial statement and the financial statement comes in in March 1987; isn't that right, Mr. Strange?

Mr. STRANGE. Yes.

Mr. CHERTOFF. Then in 1988, you have to get a financial statement again if the loan is going to be turned over. But in 1988, the decision was made that there would be a waiver of the requirement of any future financial statement, or at least of any financial statement for that year from the Clintons; isn't that correct, Mr. Penick?

Mr. PENICK. I don't know, sir. I was not involved in the——

Mr. CHERTOFF. Mr. Strange, that's correct; right?

Mr. STRANGE. Excuse me——

Mr. CHERTOFF. In 1988, the requirement of a financial statement from the Clintons was waived; right?

Mr. STRANGE. Yes, it was.

Mr. CHERTOFF. The reason this is brought up is because we have an issue here that is frankly, judging from the letter of July 7th, of concern to a bunch of bankers who are worrying about where their branches are located, but which doesn't concern some momentous issue of economic policy. And yet, it appears from the memo of July 5th from Betsey Wright to the Governor, which the Governor reads and checks off, that the Governor personally has intervened to take a position on this 300-foot issue.

We have this case here involving a dispute between two banks about where are they going to locate a branch and the Governor personally gets on the phone and gets involved in a discussion about whether we are going to change the pre-existing law and drop this 300-foot limitation out.

And you would agree with me, Mr. Penick, you wouldn't normally think the Governor of a State would take a personal interest in a matter as particular and as individual as how there is going to be a resolution of a lawsuit between two banks about where the branch is going to be located. That's not a big macroeconomic policy issue, is it?

Mr. PENICK. No, sir, but it was holding up the legislation. The agreement the Governor had with Mr. Hartsfield and others, where if the bankers came together and agreed on legislation, he will call a special session and sponsor it through. This was simply an attempt to get that agreement. We wanted the 300 feet thrown out; others wanted it kept in.

Mr. CHERTOFF. In connection with this memo of July 5th, we have on the very same day, your note in your handwriting to Bill—and you are telling us you don't know whether it is Bill Ford or Bill Clinton—specifically thanking him for assistance on the 300-foot provision; right? This comes not from the files of the Banking Commission, which hasn't produced any such document, but from the files of the Governor. And it is your testimony that the Bill that you are addressing here is not Bill Clinton, but it is Bill Ford; is that right?

Mr. PENICK. That's what I recall, yes, sir.

Mr. CHERTOFF. But the memo written the very same day from Betsey Wright to the Governor indicates that the deletion—it says, “the bill does not contain the 300-foot provision based on their conversation with you,” the “you” being Governor Clinton, “this morning.” In other words, the contemporaneous memo of Betsey Wright indicates that the basis for not having the 300-foot provision is the conversation with the Governor, and that the Governor is the one who finally breaks the logjam. Would you agree; that’s correct?

Mr. PENICK. No, sir, I don’t think he did. I think it was still the same understanding that he had all along: The banking community had to come together. Because it was a very controversial issue, he had supporters on all sides; he needed to have a piece of legislation that would go through without opposition, or the least opposition as possible.

Mr. CHERTOFF. Let me also observe to you, Mr. Penick, and you have no way of knowing this but it may help move you on your recollection of whom you wrote this Bill letter to—that all these letters were produced, all these memos which are internal memos of the Governor, were produced from the Governor’s office, and they are numbered in order the way they are produced. And right in the middle of the production is the letter to—the Bill letter, the handwritten Bill letter, which I think further confirms that this was a letter which was directed not to the Bank Commission, which doesn’t seem to have a copy of it, but to the Governor’s office, which has it in the same file as all the other internal memos of the Governor concerning this issue.

My question to you is this: This 300-foot issue, was an issue of concern to your bank because of an ongoing case which involved the location of one of your branches; isn’t that correct?

Mr. PENICK. It was an issue, yes, sir.

Mr. CHERTOFF. And that was the issue that, from the beginning of the year, you were pushing and lobbying to get resolved in a way that would support your point of view; in other words, you wanted to delete that 300-foot limitation from the law so that the lawsuit would go away and you could have your branch in the building which you owned a minority interest in; right?

Mr. PENICK. It was not the top priority, no, sir, but it was something we were working on.

Mr. CHERTOFF. It was kind of close to the top; right?

Mr. PENICK. I wouldn’t put it there, no, sir. I think the passage of the Omnibus Banking Bill was a lot more important.

Mr. CHERTOFF. It was certainly priority enough for you to spend time on and write notes on and have conversations with around get up—kind of get opposite this Arkansas Bankers Association group that wanted to keep the bill. I mean, it was important enough for you to do that?

Mr. PENICK. We were adversaries of the Arkansas Bankers Association for a long, long time.

Mr. CHERTOFF. On this particular issue; right?

Mr. PENICK. I think they opposed this, yes, sir, in the beginning.

Mr. CHERTOFF. And then it turns out the Governor called it your way; is that right?

Mr. PENICK. The bill that was ultimately passed did not have a 300-foot provision in it, no, sir.

Mr. CHERTOFF. That's what you wanted?

Mr. PENICK. Among other things, that's correct.

Mr. CHERTOFF. Mr. Penick, if nothing else, let's at least get this one straight. The bill that came out did not have the 300-foot provision, which meant that there was no legal impediment to your keeping the branch in the building you owned a minority interest in, and that was what you wanted; yes or no?

Mr. PENICK. I'm sorry. Would you repeat your question?

Mr. CHERTOFF. The bill that was finally passed did not have the 300-foot limitation; you got to keep the branch in the building, and that's what you wanted; right?

Mr. PENICK. Yes, sir, it was a good bill and we agreed with it.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Penick, who is Wayne Hartsfield?

Mr. PENICK. He is President of a bank in Searcy, and in early 1988, he was President of the Arkansas Bankers Association.

Mr. BEN-VENISTE. Now according to the notes that we have, on March 14, 1988, you stated that:

Wayne Hartsfield, President of Arkansas Bankers Association and President of First National Bank of Searcy, visited with me today concerning a proposal he is working on to settle the Branch Banking dispute.

Hartsfield has an agreement with the Governor to call a special session, upon full concurrence and commitment of the bankers and banking organizations in the State to support the legislation.

Now, you are familiar with that memo, because you apparently dictated it?

Mr. PENICK. That's correct.

Mr. BEN-VENISTE. Did anyone charge you with going back into the files and backdating some document, scooting this into your files, about Mr. Hartsfield being the person who initiated this matter with the Governor's office?

Mr. PENICK. No, sir, not to my knowledge.

Mr. BEN-VENISTE. Therefore, wouldn't this indicate the true genesis of how this 1988 business all got started, to the extent it has any relevance to anything that we are doing?

Mr. PENICK. I am just reading it, but I don't see any comment relative to the position on the 300-foot in this memo.

Mr. BEN-VENISTE. Right. And with respect to calling the special session, Mr. Hartsfield is the one who had the agreement with the Governor's office about calling the special session, which was the crux of getting any legislation out. According to this memo, that required that you bankers sit down, get your act together, come up with some kind of a compromise you could all live with, and then present it; right?

Mr. PENICK. Yes, sir.

Mr. BEN-VENISTE. That's what happened?

Mr. PENICK. That's what happened, yes, sir.

Mr. BEN-VENISTE. Now, Mr. Chertoff told you what Mr. Dewey said in his testimony, but not what Mr. Proctor said. So let me go back over this, this was just yesterday.

Mr. CHERTOFF. So we have the flow. Mr. Dewey, would you agree with me that this loan, this Whitewater loan was a nuisance and was continually past due at the bank?

Mr. DEWEY. As I remember it, sir, yes.

Mr. CHERTOFF. It was something that was discussed at the bank?

Mr. DEWEY. Yes, sir.

Mr. CHERTOFF. Mr. Proctor, you would agree with that, right?

Mr. PROCTOR. No, I would not, because I personally handled the loan and Mr. Dewey did not. So he saw it from the outside, yes, the outside looking in, and I guess he saw what I was doing, and he thought maybe that was a burden to me. But I did not see it that way. I thought it was very typical of the loans that we had at that time, during that period in the economy.

Now that is a fuller picture of what occurred. Obviously, you have not been provided with a transcript of what actually was testified to here yesterday.

Mr. PENICK. That's correct.

Mr. BEN-VENISTE. I hope we are about finished here.

Mr. Chairman, we will yield our time back.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Let's put up JRTS 203. As Mr. Chertoff just mentioned, the documents as they are produced to the Committee are produced by the Governor's lawyers, presumably, in order the way they are found in the files. Document 203, which is the first one we are going to put up, is a handwritten note from Sam Bratton to the Governor. That's followed by Bates number 204 and 205, which is the letter from Mr. Bowen to the Governor relating to this 300-foot branching issue. That's followed by this Penick note which bears Bates number 206, the one which, Mr. Penick, you think may have been written to the Bank Commissioner. But I would like to just draw your attention to this—

The CHAIRMAN. Let's make sure he has it. Do you have it in front of you? No?

Mr. PENICK. No, sir.

The CHAIRMAN. Let's get someone down there, even though it is in the file, because it will take forever for him to look through and try to find this.

Mr. BELMAN. What's the date on the documents?

Mr. GIUFFRA. Well, it is an undated note, but it bears the Bates number 203.

The CHAIRMAN. At the top of it, it says, "State of Arkansas, Office of the Governor, Route Slip, Remarks."

Mr. BELMAN. If you give us a date around that, these are supposedly in chronological order, if you will tell us about where it is in the file.

Mr. GIUFFRA. This would have been sometime in July, presumably, 1988. We will put up the copy I have on the Elmo. Let's make it a little smaller. This note was found in the production before Mr. Bowen's note.

Senator SARBANES. I can't read the Elmo.

Mr. GIUFFRA. We will make a copy of it.

The CHAIRMAN. You know what, I've reached a point where I am going to take a recess. We are going to get the three documents that we are going to look at. Everybody is going to have an opportunity to have them in front of him, because we are going to do this thing the right way. We stand in recess for 5 minutes.

[Recess.]

The CHAIRMAN. I have been advised everyone now has the documents in question. We will now ask Mr. Giuffra to identify the first

one which is up on the Elmo, and see if we can't move through this. Mr. Giuffra.

Mr. GIUFFRA. The issue that we have been trying to grapple with is whether this note which bears the Bates number 206, to Bill from Mr. Penick, was sent to Governor Clinton.

The CHAIRMAN. You have a different one up there now.

Mr. GIUFFRA. In the production of documents, this note, Bratton to the Governor, bears the Bates number 203 and it is followed by the letter from Mr. Bowen of First Commercial Bank to the Governor about the 300-foot branching restriction, indicating the Governor's willingness to eliminate the 300-foot branching restriction. Then the next document is the letter from you, Mr. Penick, to Bill, thanking Bill for his help on the 300-foot branching restriction; you will agree with that? Bates numbers 203, 204, 205 and 206; right?

Mr. PENICK. I have them, yes.

Mr. GIUFFRA. You will agree your note bears Bates number 206; is that right?

Mr. PENICK. Yes, it does.

Mr. GIUFFRA. Mr. Bowen's letter to Governor Clinton bears the Bates number 204, 205; right?

Mr. PENICK. Yes, sir.

Mr. GIUFFRA. The document I want you to take a look at is 203. We are trying to solve the mystery of who you might have written the letter to. This is a note to Mr. Bratton. It bears the Bates number 203. It appears to be attached to the Bowen letter, and also to your note. The note from Mr. Bratton, who is the person in the Governor's office most responsible for the banking legislation, "Did you talk with Bowen after this letter?" Presumably this is the letter of July 7th, in which Mr. Bowen said he wanted the Governor to reconsider his position on the 300-foot restriction. "Do you want a written response?" Then it says, "Same Q on Ed Penick note."

Now presumably, the Governor's Counsel would not be asking the Governor if he wanted to respond to a letter that was written to someone else; right?

Mr. PENICK. 203 is not dated.

Mr. GIUFFRA. That's correct, it is not dated; I would agree with that. But 203 falls in the production before the Penick letter which it refers to, and then your note which it also refers to; correct?

Mr. PENICK. I don't know anything about the production, no, sir.

Mr. GIUFFRA. But you can see the numbers, can't you, at the bottom right-hand of the documents?

Mr. PENICK. Yes, sir, but they don't mean anything to me.

Mr. GIUFFRA. But these numbers indicate how the documents were found in Governor Clinton's files, and they indicate that your note was referred to, "Same Q on Ed Penick note. Do you want written response?"

Mr. PENICK. If you are asking me to swear to that, I will not.

Mr. GIUFFRA. I'm not asking you to swear to it. I'm asking you, doesn't it appear from this cover memo that it refers to your note?

Mr. PENICK. Yes, sir. The one Ed Penick, that could be my father also, because he was Chairman of Worthen Bank at the time.

Mr. GIUFFRA. Did your father write this note bearing Bates number 206, which follows three documents in the production after the note from Sam Bratton?

Mr. PENICK. 206 is my note.

Mr. GIUFFRA. Clearly your note. We are almost done.

Mr. Strange, just so we get this down, lines of responsibility at your bank for a loan of \$50,000, which is what this Whitewater loan was, would normally be handled by the loan officer; right?

Mr. STRANGE. That's correct.

Mr. GIUFFRA. You were the President of the bank, so wouldn't it normally be handled by you; right?

Mr. STRANGE. Not necessarily.

Mr. GIUFFRA. Now, you had a number of communications with Mrs. Clinton about this loan; right?

Mr. STRANGE. Yes.

Mr. GIUFFRA. Am I correct that Mrs. Clinton was your primary contact among the borrowers with regard to this loan?

Mr. STRANGE. She was my only contact.

Mr. GIUFFRA. The first contact you had with Mrs. Clinton was in the fall of 1986; right?

Mr. STRANGE. As I recall, that would be about right.

Mr. GIUFFRA. Mrs. Clinton called you; right?

Mr. STRANGE. Yes.

Mr. GIUFFRA. You did not call Mrs. Clinton?

Mr. STRANGE. No, I did not.

Mr. GIUFFRA. Why was Mrs. Clinton calling you?

Mr. STRANGE. From a question I had posed to Mr. Clinton at that time about the loan, that I needed to talk with somebody about it.

Mr. GIUFFRA. Then Mrs. Clinton came to you later about some tax information she wanted; right?

Mr. STRANGE. Right.

Mr. GIUFFRA. In this period July 1988, when we are having a lot of activity—June, July 1988—with regard to the branching legislation, Mrs. Clinton was having communications with you; right?

Mr. STRANGE. Yes.

Mr. GIUFFRA. About the renewal of the loan?

Mr. STRANGE. Yes.

Mr. GIUFFRA. Let's put it up on Elmo. We have CBF 416. This is a letter from Mrs. Clinton to Jim McDougal which is cc'd to you, and it says, "Blind P.S." It is dated June 9, 1988.

Mr. STRANGE. Excuse me, what's the date on that?

Mr. GIUFFRA. June 9, 1988.

Mr. STRANGE. OK, I have that.

Mr. GIUFFRA. Do you recall Mrs. Clinton indicating to you that she was having a problem getting certain documentation from Mrs. McDougal; right?

Mr. STRANGE. Yes.

Mr. GIUFFRA. You told Mrs. Clinton you were concerned about this loan being called attention to during a bank examination; is that right?

Mr. STRANGE. I don't recall that I said that it would be called to in a bank examination.

Mr. GIUFFRA. Why don't we look at the last sentence of Mrs. Clinton's note to Mr. McDougal. It says: "The note is up for extension and the bank is clearly anxious to have this matter resolved properly in time for their examination." Do you recall indicating to

Mrs. Clinton that your bank was clearly anxious to have this matter resolved properly in time for the examination?

Mr. STRANGE. I do not recall specifically that statement.

Mr. GIUFFRA. Let's turn to July 13th. This letter is from the same time this branching issue is arising. Do you have that letter in front of you? This is Mrs. Clinton's letter to you.

Mr. STRANGE. Yes, I do.

Mr. GIUFFRA. This is when she sent you the renewal notice; is that correct?

Mr. STRANGE. Yes.

Mr. GIUFFRA. On July 15th, we have CBF 411, 2 days later, you sign off on the document waiver, indicating that you don't need to have financial statements from Mr. McDougal; right?

Mr. STRANGE. Correct.

Mr. GIUFFRA. That is the same day the Governor signs the bill without the 300-foot branching restriction; correct?

Mr. STRANGE. That is according to the records. I did not know that personally, but that seems to be correct.

Mr. GIUFFRA. One last question and we will be done. I would like to move your attention to 1992, during the Presidential Campaign. Do you recall getting a letter from Mrs. Clinton asking you to communicate with someone by the name of Loretta Lynch?

Mr. STRANGE. I believe that I do, yes.

Mr. GIUFFRA. What was Mrs. Clinton asking you to do with regard to Loretta Lynch? We have a letter actually dated March 4, 1992, which bears Bates number RIC 3638.

Mr. STRANGE. She was asking me to release documentation that was in the bank's possession to Loretta Lynch.

Mr. GIUFFRA. Did you have a conversation with Mrs. Clinton at that time?

Mr. STRANGE. I don't recall that I did.

Mr. GIUFFRA. Do you recall Mrs. Clinton indicating to you that Ms. Lynch was a secretary to either Mrs. Clinton or the Governor?

Mr. STRANGE. I believe that Ms. Lynch, in a phone call; asking for some documentation, identified herself as having something to do with the campaign, or assistant to one or the other of them.

Mr. GIUFFRA. Did she indicate to you she was Mrs. Clinton's Secretary? That's your deposition testimony.

Mr. STRANGE. That may have been. I am not exactly sure what her identification was.

Mr. GIUFFRA. Did she indicate to you why she was looking for these documents?

Mr. STRANGE. I don't believe she did.

Mr. GIUFFRA. Since the 1992 campaign, have you had any communication with anyone from the White House or a representative of the Clintons with regard to this loan?

Mr. STRANGE. Yes, I have. Mr. Clinton's attorney.

Mr. GIUFFRA. Mr. Kendall.

Mr. STRANGE. Mr. Kendall called me just prior to the Time magazine article being published, and he asked for a copy of the 1987 financial statement.

Mr. GIUFFRA. Mr. Penick, since the 1992 campaign up to the present, have you had any communication with anyone from the White House or any representative of Governor Clinton with regard

to your activities in 1987 or 1988, in connection with either the branching legislation or the loan?

Mr. PENICK. Not that I can recall, no, sir.

Mr. GIUFFRA. Same question to you, Ms. Eldridge.

Ms. ELDRIDGE. No, sir.

Mr. GIUFFRA. Thank you. No further questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I didn't quite follow it, Mr. Penick, but you were asked some question about being the landlord or the owner of the building in which the branch was located; is that correct?

Mr. PENICK. That's correct, yes, sir.

Senator SARBANES. I guess the implication was that you had a big vested interest in this, a personal vested interest in this matter. I think you said, you were a minority owner; is that right?

Mr. PENICK. That's correct.

Senator SARBANES. How much of a minority owner were you?

Mr. PENICK. Senator, it is way down, it is less than—less than half a percent, I know. And there are 50-something partners in the building. My disclosure was made in my interest, and also two other officers in the bank had an interest in that building also.

Disclosure was made to our full Board of Directors, and to Bill Houston, who was Regional Director of the FDIC in Memphis at the time when the branch was approved.

Senator SARBANES. So it was disclosed to the FDIC and to your own bank?

Mr. PENICK. That's correct.

Senator SARBANES. And the extent of your interest, in any event, was about half of 1 percent; is that correct?

Mr. PENICK. Yes, sir, way down. It is the passive interest.

Senator SARBANES. That's all I have. Thank you, Mr. Chairman.

The CHAIRMAN. No further questions. We thank the panel.

We stand in recess until Tuesday.

[Whereupon, at 4:25 p.m., the hearing was adjourned, to reconvene at 10:00 a.m., on Tuesday, May 14, 1996.]

[Appendix supplied for the record follows:]

Depo of: PATSY L. THOMASSON (In Re: Whitewater) July 11, 1995 Cr61901.0

PAGE 1 TO PAGE 101

ACE-FEDERAL REPORTERS, INC.

202-347-3700

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

ACE-FEDERAL REPORTERS, INC.
1120 G STREET, NW SUITE 500
WASHINGTON, DC 20005
Phone: 202-347-3700
FAX: 202-737-3638

- (2) That's where I was born and raised.
 (3) As a result of that, if there were events
 (4) that would happen in the Fourth Congressional
 (5) District that would be in honor of or something that
 (6) Beryl Anthony would give for his friends, I would be
 (7) invited because of my membership on the Highway
 (8) Commission.
 (9) And I met Vince Foster at one of those
 (10) events but I can't tell you whether it was in Hot
 (11) Springs or it was in Little Rock or where that
 (12) happened. It could have been El Dorado but
 (13) probably
 (14) Hot Springs or Little Rock.
 (15) *Q In the period before you came to*
 (16) *Washington, did you have much contact with*
 (17) *Mr. Foster?*
 (18) A No, I did not.
 (19) *Q Did the Rose Law Firm do any work for the*
 (20) *Lassiter businesses either at the holding company*
 (21) *level or the subsidiary level?*
 (22) A They might have done a little work on a
 consulting kind of basis at one time for

Page 31

- (1) Mr. Lassiter. There was a particular lawyer that
 (2) Mr. Lassiter liked in the firm whose name was Kenny
 (3) Sherman, and from time to time Dan would call Kenny
 (4) and ask him for personal advice. Did they handle
 (5) any
 (6) of our lawsuits, no.
 (7) *Q When you say "consulting," you mean legal*
 (8) *advice consulting?*
 (9) A Yes.
 (10) *Q Anybody besides the lawyer that you*
 (11) *mentioned that provided legal advice to*
 (12) *Mr. Lassiter's business?*
 (13) A Not to my knowledge.
 (14) *Q Did you ever have any occasion in any other*
 (15) *capacity to work with the Rose Law Firm?*
 (16) A I don't recall ever having the Rose Law
 (17) Firm on my side.
 (18) *Q Were you ever against them in a case in*
 (19) *litigation?*
 (20) A I can remember being in their law firm when
 (21) they were on one side and we were on an opposite
 (22) side, yes.
Q When you say "we" -

Page 32

- (1) A It was the Lassiter Company.
 (2) *Q Do you remember what instance that was?*
 (3) A It was an Emerald Isle case and it was a
 (4) bankruptcy case that we were peripherally involved
 (5) in. And there were other lawyers there, but the Rose
 (6) Firm had somebody there for somebody. And there
 (7) were
 (8) a number of parties to it, but I remember essentially
 (9) we weren't on the same side as the Rose Firm.
 (10) *Q When was this case?*
 (11) A '84, '85.
 (12) *Q So this was around - this was before you*

- (13) took out that loan that you testified about
 (14) previously from Madison Guaranty?
 (15) A I would say it was before, yes.
 (16) *Q And I take it that this representation by*
 (17) *the Rose Law Firm had nothing to do with that loan*
 (18) *from Madison Guaranty?*
 (19) A Had nothing to do with that.
 (20) *Q Now, when you came to the White House in*
 (21) *March of 1993, did you have occasion to work with*
 (22) *Mr. Foster?*
 A We worked together on occasion as it

Page 33

- (1) related to the White House travel office.
 (2) *Q And what in particular was the work that*
 (3) *you did in connection with that?*
 (4) A In connection with that, the White House
 (5) staff in the office of management and administration
 (6) had been reviewing every office under its purview to
 (7) make sure its operations were what we wanted them
 (8) to
 (9) be and to make sure they operated in a manner that
 (10) we
 (11) thought was effective for the Clinton
 (12) Administration.
 (13) And one of the offices we had not done was
 (14) the White House travel office and we were working to
 (15) evaluate the White House travel office and its
 (16) function and its ability to function. When we got to
 (17) that particular office, it was so different than
 (18) every other office that we had looked at because
 (19) we'd
 (20) already looked at the office of administration and
 (21) we'd looked at various offices within the White
 (22) House, but the White House travel office was the
 only
 one that handled cash every day. None of the other
 offices handled cash on a daily basis because of the
 nature of their work.

Page 34

- (1) We didn't have on staff at the White House
 (2) accountants, numbers guys, bean counters, auditor
 (3) types. And as a result of that, we opted to hire
 (4) someone from the outside to come in to help with
 (5) that
 (6) particular part of the review of the travel office.
 (7) We felt we had the talent and capability in-house to
 (8) look at the management side and how the office was
 (9) being managed, but we didn't have in-house talent to
 (10) review the numbers and to do an audit of the dollars
 (11) and cents that were there.
 (12) We talked among David Watkins and Vince and
 (13) myself, and we agreed that it would be a better idea
 (14) to get someone from the outside than someone from
 (15) the
 (16) inside who might not be as credible, who might have
 (17) done the work fine but might not be as credible
 (18) because they didn't have CPA behind their name, so
 (19) we
 (20) would hire an outside firm.

(118) That discussion, I believe, took place
 (119) among the three of us. And then we hired a
 (120) particular firm who had some experience in
 (121) government, and because they had that experience
 (122) with
 (123) government and RIGO, we determined that would be
 (124) a

Page 35

(11) good firm for us to do.
 (12) Q Government and?
 (13) A Reinvesting government.
 (14) MR. BEN-VENISTE: RICO means something else
 (15) that criminal lawyers know.
 (16) THE WITNESS: This is reinvesting
 (17) government. Then the auditors came in and I took
 (18) them to their work space every day and they would
 (19) report back to me as to their progress and then I
 (20) would report to Vince if he were around. If Vince
 (21) weren't around, I would report to Bill Kennedy
 (22) information that they were turning up along the way.
 (23) BY MR. CHERTOFF:
 (24) Q As a consequence of the information they
 (25) turned up, did there come a point in time when you or
 (26) Mr. Foster or Mr. Kennedy wound up in contact with
 (27) the FBI?
 (28) A Someone was in contact with the FBI, yes.
 (29) Q How did that happen?
 (30) A Well, they had turned up, fairly early in
 (31) the investigation, that there was a lot of missing
 (32) dollars, somewhere between 15- and \$18,000 missing

Page 36

(11) and unaccounted for in the petty cash. As a result
 (12) of that, that's a large sum of money particularly
 (13) when the White House is acting in a fiduciary
 (14) responsibility for the White House press corps, for
 (15) that money to be missing.
 (16) And at that point we knew that we had to
 (17) do - we had to alert some authority about this
 (18) missing money, that we couldn't just put our head
 (19) under our shoulder and wish it would go away.
 (20) Someone had to be alerted. So we talked about it
 (21) and
 (22) I was not in all those meetings, but I know
 (23) subsequent to that, the FBI was called because in
 (24) Little Rock, we would have called the prosecutor's
 (25) office and said look, guys, we've got a problem.
 (26) Tell us what we need to do.
 (27) In Washington it's a little harder to know
 (28) this and this is the White House and because we had
 (29) had ongoing relationships with the FBI on a
 (30) day-to-day process with the vetting process at the
 (31) White House, I think that's why - I'm sure that's
 (32) why Bill Kennedy talked to the FBI, to talk to them
 (33) about it.

Page 37

(11) Q It was Mr. Kennedy's decision to call the
 (12) FBI?
 (13) A I don't know if it was singularly
 (14) Mr. Kennedy's decision.

(15) Q Were you part of the group that was dealing
 (16) with this issue?
 (17) A I was part of the group that was dealing
 (18) with how much money was missing. I was not part
 (19) of
 (20) the group that was making the decision about who to
 (21) call.
 (22) Q At this point in time, was there a
 (23) substitute for the company or agency that was
 (24) handling the money in the travel office? Was there a
 (25) change in the identity of the people who would be
 (26) handling the travel out of the White House?
 (27) A Not at that point.
 (28) Q Did there come a point where there was a
 (29) change?
 (30) A Yes, there was.
 (31) Q When was that?
 (32) A It was the next week after the members of
 (33) the travel office had been terminated. We had a firm

Page 38

(11) that volunteered to come in and help us get through
 (12) some period of time until we could let a contract to
 (13) either do it through contract and have the work done
 (14) by contractor, or we could make a determination on
 (15) who we want to run that office on an ongoing basis.
 (16) Q What was that firm?
 (17) A Slips my mind. Worldwide Travel.
 (18) Q Where was the firm located?
 (19) A Little Rock.
 (20) Q Who were the principals of the firm, people
 (21) who ran the firm?
 (22) A I can't tell you that. I don't know.
 (23) Q Do you know any of them?
 (24) A No, I don't.
 (25) Q Was there anybody in particular who
 (26) volunteered the firm to handle the travel?
 (27) A I don't know the answer to that.
 (28) Q Was there anybody who's related to the
 (29) President who was involved with the firm?
 (30) A Not to my knowledge.
 (31) Q Was there anybody who's friendly with the
 (32) President who was part of that firm?

Page 39

(11) A Well, the firm had worked in the campaign
 (12) and provided travel services through the campaign,
 (13) so
 (14) I'm sure that all the people who were in the
 (15) campaign
 (16) knew the travel agency, knew the travel agents and
 (17) the people.
 (18) I didn't work in the campaign so I don't
 (19) really know those travel agency people. I'm sure
 (20) I've heard their names in the past. I just don't
 (21) recall them.
 (22) Q You don't remember the name of the travel
 (23) agency people?
 (24) A No, I don't remember.
 (25) Q When you say they volunteered, they
 (26) obviously volunteered with the notion they'd be paid?

(29)

DRAFT

DRAFT

DRAFT

PRIVILEGED AND CONFIDENTIAL

CGE 012286

MEMORANDUM FOR

FROM: DAVID WATKINS

SUBJECT: Response to Internal White House Travel Office Management Review

In an effort to respond to the Internal Travel Office Review, I have prepared this memorandum, which details my response to the various conclusions of that Report. This is a soul cleansing, carefully detailing the surrounding circumstances and the pressures that demanded that action be taken immediately. It is my first attempt to be sure the record is straight, something I have not done in previous conversations with investigators - where I have been as protective and vague as possible. I know you will carefully consider the issues and concerns expressed herein.

As a preliminary matter, the procedure followed in finalizing the report was needlessly unfair. Even in the context of General Accounting Office audits and reviews, the reviewed agency is afforded the opportunity to respond to the report and criticisms prior to release and publication. This is an important step which allows inaccuracies or erroneous conclusions to be addressed and corrected prior to publication, and more importantly, allows the criticized party to respond to the contents of the report. Unfortunately, in this case, neither I nor others directly involved were afforded any opportunity to rebut the contents and conclusions of the internal Review.

In this case, I was notified of the forthcoming reprimand around 10 a.m. on July 2. But I received a copy of the report shortly after noon the same day, and at get exact time from that briefing the report was publicly released. I was never afforded the opportunity to respond, and until this memorandum, I have never responded to the report or its contents.

With the recent release of GAO audits and the resultant press coverage and criticism of my office, setting the record straight on the Travel Office occurrences is important.

BACKGROUND

As you recall, an issue developed between the Secret Service and the First Family in February and March requiring resolution and action on your's and my parts. The First Family was anxious to have that situation immediately resolved, and the First Lady in particular was extremely upset with the delayed action in that case.

Likewise, in this case, the First Lady took interest in having the Travel Office situation resolved quickly, following Harry Thomason's bringing it to her attention. Thomason briefed the First Lady on his suspicion that the Travel Office was improperly funnelling

3C

DRAFT

business to a single charter company, and told her that the functions of that office could be easily replaced and reallocated.

Once this made it onto the First Lady's agenda, Vince Foster became involved, and he and Harry Thomason regularly informed me of her attention to the Travel Office situation - as well as her insistence that the situation be resolved immediately by replacing the Travel Office staff.

Foster regularly informed me that the First Lady was concerned and desired action - the action desired was the firing of the Travel Office staff. On Friday, while I was in Memphis, Foster told me that it was important that I speak directly with the First Lady that day. I called her that evening and she conveyed to me in clear terms that her desire for swift and clear action to resolve the situation. She mentioned that Thomason had explained how the Travel Office could be run after removing the current staff - that plan included bringing in World Wide Travel and Penny Sample to handle the basic travel functions, the actual actions taken post dismissal ^{of} and in light of that she thought immediate action was in order.

On Monday morning, you came to my office and met with myself and Patsy Thomason. At that meeting you explained that this was on the First Lady's "radar screen." The message you conveyed to me was clear: immediate action must be taken. I explained to you that I had decided to terminate the Travel Office employees, and you expressed relief that we were finally going to take action (to resolve the situation in conformity with the First Lady's wishes). We both knew that there would be hell to pay if, after our failure in the Secret Service situation earlier, we failed to take swift and decisive action in conformity with the First Lady's wishes. You then approved the decision to terminate the Travel Office staff, and I indicated I would send you a memorandum outlining the decision and plan, which I did.

I have never stated all this so clearly before, but to form a complete and accurate picture it must all be kept in mind while reading the specific criticisms of the Podesta Management Review. I will now address those criticisms directly.

RESPONSE TO SECTION II "DISCUSSION OF PRINCIPAL ISSUES" OF TRAVEL OFFICE REVIEW

"Travel Office Management" (Page 14):

"The review conducted by KPMG Peat Marwick uncovered serious financial mismanagement." At ...

At the strong recommendation of myself and others in my office, KPMG Peat Marwick was brought in - instead of having the FBI take over immediately - to review the financial practices of the Travel Office. I concurred in Peat Marwick's analysis and conclusions: Management of the Travel Office was abysmal.

CGE 012287

(3)

DRAFT

CGE 012288

"Treatment of the Travel Office Employees" (Page 15):

"While all White House Office employees serve at the pleasure of the President, the abrupt manner of dismissal of the Travel Office employees was unnecessary and insensitive." At _.

In the conversation with the Travel Office staff notifying them of their termination, I explained that a review of the Travel Office operations had always been planned to conform to the general review process implemented across the White House administrative offices and the Office of Administration. I further explained my decision to terminate them; I explained that from a management perspective, in this case it was best to relieve them all immediately from their jobs and provide them an additional two weeks in pay. I informed them of this and asked them to leave immediately. The tone was firm, with emphasis on the mismanagement recounted in the Pest Marwick report. I explained that in light of that mismanagement, it was best to dismiss the entire office.

The allegation in the report that this was insensitive is wrong. These employees work at the pleasure of the President and all in the White House Office should understand that there is extremely low tolerance for the severely negligent and unaccountable procedures followed in that office. In light of the First Lady's insistence for immediate action and your concurrence, the abrupt manner of dismissal, from my perspective, was the only option.

"Moreover, the Pest Marwick report did not furnish sufficient cause for terminating the employees without financial authority. As a legal matter, the White House has the right to terminate an employee without cause. In this case, however, the White House asserted that the termination of all seven was for cause. Based on the information available, this assertion was inappropriate with respect to the employees who did not exercise financial authority. . . . Absent cause, a more humane approach was in order. For example, even if it were decided that the Travel Office would operate more efficiently with a reorganized, smaller staff, an effort could have been made to locate other federal employment for those who would be displaced." At 15.

*John Report
forwarded to
press head*

As early as February, the intent of Management and Administration was to review and reorganize the Travel Office before October 1 into a leaner operation - just as with every other office within the domain of Management and Administration, from the Photo Office to the Telephone Office to the Travel Office. That remained the plan until the intense pressures surrounding this incident arose in May. If given time to develop, the original plan to reorganize the Travel Office for a smooth transition in September would have allowed the Travel Office employees to seek other federal placement, along with other Executive Office of the President staff, in anticipation of the end of the fiscal year staff cuts; however, when pressure began to build for immediate action in the Travel Office, the long-term plans were short-circuited.

"The other major White House mistake in the treatment of the former Travel Office employees was in tarnishing their reputations. This resulted, as discussed above, from the inappropriate disclosure of an FBI investigation into potential wrongdoing in the Travel Office. (p. 15) . . . It was a mistake for the White House to publicly discuss FBI involvement, which led to the disclosure of the FBI investigation. . . . The talking points prepared by Watkins' office for the press office stated that the

32

DRAFT

White House had asked the FBI to investigate. Eller had also mentioned the FBI in an earlier draft of talking points. In making that reference, Watkins and Eller were insensitive to the effect such reference can have on the reputation of an innocent person. [This mistake was compounded when Foster's and Kennedy's instruction to eliminate the FBI reference was not carried out. Watkins did attempt to reach Myers, and Eller himself omitted the FBI reference in his own background press briefings the morning of May 19. However, neither ensured that Myers avoided the reference.] At 18.

Revealing the ongoing FBI investigation was insensitive, but that fact comprised one sentence in a draft version of talking points drafted by one of my staff and distributed for comment on the morning of May 19 — the day of the termination. The talking points were distributed to Foster, Kennedy, Myers, and Eller with the expectation that we would have until the 2 o'clock press briefing to get the kinks worked out of the talking points. As soon as the suggestion came to delete the reference to the FBI, it was done. I immediately went to see Myers to inform her of the change and sensitivity to the ongoing investigation, but she had gone to the Hill with the President. I struck that sentence from Eller's copy and asked him to inform Myers. As soon as Myers returned from the Hill, prior to noon — more than an hour before the press briefing — I proceeded to her office and told her not to mention the FBI investigation. She informed me that it was too late. She had already responded by phone to a reporter's inquiry by phone.

Thus, this was a mistake made on my part because I was not intuitive enough to take the talking points drafted by one of my staff and realize that the FBI investigation should not be mentioned — despite the strong support this provided for White House actions.

"Catherine Cornelius also played a role in the dismissal of the Travel Office employees, and she too had a personal stake in the outcome. As the three memos she wrote on the Travel Office attest, she was eager to work in and, if possible, manage the Office. Her proposal to reorganize the travel office was appropriate and would be considered usual to any transition process. But her role in the decision-making process after she became, in effect, an 'accuser' of the Travel Office employees, by collecting documents and alleging possible wrongdoing, was inappropriate. . . . [E]very effort should be made to insulate the federal government's management decisions from even the appearance that personal interests have played a role in the outcome of those decisions." At 20.

Catherine Cornelius had no part in the dismissals. I put no stock in most of what Cornelius told me except to the degree it was factual. Her arguments for dismissal and reorganization had absolutely no bearing on the final decision to terminate the employees. If her input had been respected, the need for Peat Marwick would have been negligible, but in light of her self-interest and her tendency to exaggerate, I decided to rely exclusively on a professional accounting firm. Catherine Cornelius, despite the Review's suggestion to the contrary, had absolutely no role in the decision-making process, and was in no danger of being placed in charge of the Travel Office. My intent all along was to put a trained financial manager over all the White House administrative operations, including the Travel Office.


 CGE 012289

DRAFT

When I assigned Catherine to the Travel Office, I did ask her to provide a report to me on May 15 based on her previous experience and actual experience in the Travel Office. She was placed in the Travel Office because of her prior experience in that area and a need to move her out of my immediate office — where she had become a liability to daily operations. Having had extensive experience with Catherine, I knew that her report would contain unworkable recommendations, but as I have in the past, I expected to distill those with which I disagreed from those I thought helpful. Unfortunately, due to her desire to revamp the Travel Office in her own likeness, Catherine may have ignored my intent to carefully review and scrutinize any recommendations made.

After Catherine became an "accuser" of the Travel Office staff, her input was merely on a factual level. I interviewed her to derive the factual basis of her allegations and for facts about the tasks performed by the Travel Office staff, but never asked for other, non-factual input other than the May 15 report I was expecting. All views she expressed were evaluated in light of her known bias. To put it simply, she had no impact on the decision-making process other than by providing factual information.

"The White House took several actions that demonstrated an insensitivity to the appearance of favoritism. Hiring World Wide Travel on a no-bid basis — even as an interim, stop-gap measure — created the appearance of favoritism toward a local friend from the campaign. World Wide's president, Beta Carney, is a long-time acquaintance of Watkins. Watkins' Little Rock advertising agency was a client of World Wide in the 1970s and World Wide was a client of Watkins' agency during that time period." At 20.

Part of the plan for immediate replacement of the Travel Office staff was use of World Wide Travel Service to book commercial flights for the Office. This aspect of the plan was discussed with all interested parties, and all concurred with knowledge that World Wide had been the campaign's travel agent. This made the most sense due to the fact that we could not have publicly solicited bids in light of confidentiality concerns and when we had ongoing business needs that had to be taken care of immediately following the terminations.

As for the my longtime acquaintance with Beta Carney and World Wide Travel, I must point to my experience in the business world. There, reliance on a firm from whom one has received exceptional service is the rule.

As well, since the time I was a client of World Wide's and since World Wide was a client of my advertising agency in the 1970s, I have personally and professionally used at least half a dozen other travel services. So, any suggestion that calling them in this case derived from that history is absurd, and the media suggestions of improper favoritism were likewise absurd.

We had recent experience with World Wide, and based on that experience I knew we could rely on them for confidentiality in handling and preparing to handle the Travel Office business, until the business could be subject to full and open competition.

DRAFT



 CGE 012291

"None of this implies any improper conduct by World Wide, which is a well-established, successful travel agency, twenty-third largest in the country. World Wide executives understood that they could secure White House business only through an open, competitive bidding process. But the impression of favoring a local supporter was impossible to dispel."

At this point in the sequence of events, with the current plan approved by the First Lady and the yourself including resort to World Wide Travel, it would have unnecessarily heightened confusion to recruit an unknown travel service. Again, a primary source of the problem was the abruptness caused by the calls for immediate action in the Travel Office and the at least daily inquiries. If my plan to slowly shift as the fiscal year came to a close had remained intact, a travel agent would have been procured in a more transparent fashion. However, since at the time of hiring World Wide it was known that they had a GSA contract, hiring World Wide was not as questionable or "non-competitive" as the Report or the press would have one believe.

"Bringing in Penny Sample, President of Air Advantage, to handle prom charters on a no-bid, volunteer basis furthered the appearance that the White House was trying to help its friends. Sample was the Clinton-Gore campaign's charter broker and a close associate of Darnell Martens. This implies no improper conduct on Sample's part, but, again, created an appearance of favoritism." At 20.

Like World Wide Travel, Penny Sample was part of the short-term plan for running the Travel Office after the terminations. Since she was willing to volunteer her services without her or her company receiving any compensation — because we realized, like they did, that they would be conflicted out of virtually all White House business — we believed the conflicts and appearance of favoritism issue had been sufficiently addressed. Again, we did not believe it to be favoritism to have a former service provider for the campaign volunteer to assist the White House.

"White House Management" (Page 21):

"The White House made a number of management mistakes in handling the Travel Office."

"Lax Procedures"

"The responsibility for Thomason's influence on the Travel Office incident must be attributed to White House management. Thomason should have avoided continued involvement in a matter in which his business partner and his friends in the charter business stood to benefit and in which there was an appearance of financial conflict of interest. But lax procedures allowed his continued participation in the process. . . . There should be better management control with respect to the mission that any non-White House staff person is brought in to carry out. Permitting Thomason — or any non-staff person who comes in on special assignment — to work on problems outside the scope of his or her assignment is not a good practice." At 21.

Management and Administration had no part in bringing Thomason into the White House. In fact, the responsible office failed or intentionally neglected to inform Management and Administration of the nature of his work. Contact with this Office on the subject consisted only of the First Lady's Office calling to insist on immediate access for Thomason.

DRAFT



CGE 012292

"Placing Cornelius in Travel Office."

"Given Cornelius' personal interest in running the Travel Office, Watkins should not have placed her in the Office to make recommendations on how the Office should be structured."

As stated above, Catherine was placed in the Travel Office because of her experience in travel and to allow her to make a meaningful and significant contribution to this Administration. The original assignment was made to see if she would work there permanently -- if she liked that work and if it likewise suited her. The report I asked her to draft and provide on May 15 was in no way the driving force for her assignment to the office, it was simply a way to help determine her long-term suitability. She was placed in that office because of her extensive experience since October 1991 in coordinating travel for then-candidate Bill Clinton. She was not placed in the Travel Office primarily to make recommendations on its future structure.

"Watkins compounded the problem when, in response to Thomason's complaints, he asked Cornelius to be alert to possible wrongdoing or corruption. Cornelius lacked the experience or preparation for this role. Nor was she given any guidance." At 21.

Catherine was not asked to investigate or document wrongdoing by the Travel Office staff. I understood that she lacked experience to perform such a task. Catherine was merely asked to observe what transpired in the Travel Office -- nothing further was requested or expected. Special training is not needed to keep one's eyes and ears open, to observe. I never asked her to collect documents or other information; she undertook this of her own volition.

"If, in April, Watkins thought the allegations reported by Thomason should be looked at more seriously, he should have done so in a more professional manner." At 21.

The suggestion that this could be more professionally handled is absurd. I noted the allegations, but thought they could wait for review -- and knew they would be examined -- during the course of the planned internal review of the Travel Office. For that reason, no action was taken other than to ask to Catherine to "keep her eyes and ears open."

"Poor Planning."

"There was no adequate plan in place to manage the Travel Office in the aftermath of the dismissal." At 21.

Harry Thomason indicated that he could put a more efficient structure in place in an hour's time to handle all the tasks of the Travel Office. While I believed that my original plan to carefully review the Travel Office would best serve the White House, when I spoke with the First Lady on Friday night, May 14, she cited Thomason's plan as support for the need for immediate action. That action involved utilizing World Wide Travel and Penny Sample in the short term. As well, in my memo to you on May 17 explaining my intent to terminate the Travel Office employees the next day, the intention to use World Wide Travel was outlined. You approved this action based on this memo prior to the actual terminations.

DRAFT

"For example, no one in the decision-making chain spoke to the White House press and press advance staff members who worked closely with the Travel Office employees, knew the employees there, understood the services they provided and the degree to which they were relied upon by members of the travelling press and other considerations. None was contacted by Watkins." At 22.

In light of the need for absolute confidentiality, it would have been foolhardy to consult the press or press advance staffs. From the staff review and Catherine Cornelius' experience (this is the primary area where her factual expertise was relied upon), we in fact did know the services that the Travel Office staff performed. Catherine Cornelius and Harry Thomason regularly and repeatedly reassured me that the press charter function could easily be assumed with the assistance of Penny Sample. Thus, plans to replace these aspects of the Travel Office functions were in place prior to the dismissals. Then, when the need for immediate replacement became evident, I committed to provide whatever manpower was needed to perform the services the Travel Office staff had performed.

Immediately following the dismissals, meetings were held with the press and press advance staff to make all necessary arrangements for upcoming trips. These discussions came after the fact, but were accompanied with a commitment from my office for all necessary resources to perform the job.

"The absence of a plan prompted the last-minute use of World Wide Travel and Penny Sample of Air Advantage, which fueled the charges of favoritism already discussed." At 22.

As explained above, the plan was to use World Wide Travel and Penny Sample; there was no absence of a plan. Because of the need for confidentiality and the need for quick action, reliance on those with whom we had experience seemed the only rational decision. Having performed superbly in the campaign and in light of our need for immediate travel agent support — due to the pressure for immediate action from several quarters — we decided the plan would include short-term reliance on World Wide Travel.

I would have much preferred to have my staff carefully review the Travel Office and make a detailed business plan for the new fiscal year. This proved impossible, though, when the pressure for action from the First Lady and you became irresistible. This demand for immediate action forced me to accept hastily formulated plans for hasty, inadvisable action.

"Overview."

"The management problems in the handling of the Travel Office extended beyond the White House Office of Management and Administration. The Chief of Staff and the White House Counsel's Office had the opportunity to contain the momentum of the incident, but did not take adequate advantage of this opportunity." At 22.

CGE 012293

DRAFT

"The process should have been handled in a more careful, deliberate fashion. Before any decision was made, the Travel Office employees should have been interviewed and other White House staff who understood the operations of the Travel Office should have been consulted. If dismissals were deemed appropriate, a new structure should have been designed and readied for implementation before any action was taken. Throughout, the process should have treated the Travel Office employees with sensitivity and decency." At 22.

As stated above, I too would have much preferred to have my staff carefully review the Travel Office and formulate a detailed business plan for the new fiscal year. This proved impossible, though, when pressure for action became irresistible. If forced me to accept hastily formulated plans for hasty, inadvisable action.

CONCLUSION

I think all this makes clear that the Travel Office incident was driven by pressures for action originating outside my Office. If I thought I could have resisted those pressures, undertaken more considered action, and remained in the White House, I certainly would have done so. But after the Secret Service incident, it was made clear that I must more forcefully and immediately follow the direction of the First Family. I was convinced that failure to take immediate action in this case would have been directly contrary to the wishes of the First Lady, something that would not have been tolerated in light of the Secret Service incident earlier in the year.

For this reason, I was forced to undertake the Travel Office reorganization without a business plan firmly in hand - something I had never before done in years as a management consultant, where such plans were my business.

All failings outlined in the Podesta Management Review were either mistaken and groundless criticism, or were based on actions dictated by the need for instant action. This reorganization required more careful review, but in this case that possibility was foreclosed. Delaying action was beyond my control.

CGE 012294

CGEPR 0563

CHRONOLOGY OF TRAVEL OFFICE FIRINGS (as of 5.25.93)

Early February -- Dee Dee Myers talks to Harry Thomason and Darnell Martens about press charter business. Martens contacts Billy Dale in the White House travel office and is told there is no chance TRM will get White House business. Martens writes memo about conversation to his file.

February 15 -- Catherine Cornelius and Clarissa Cerda write memo to David Watkins proposing reorganization of travel office.

April 25 -- Catherine Cornelius goes to work in the Travel office, acting as a liaison to scheduling and advance and arranging hotels and flights for White House staff. Go there, take some report on

May 10 -- Harry Thomason and Darnell Martens meet with Watkins, describe Martens encounter with Billy Dale. Thomason calls Martens Cincinnati office and has memo faxed to White House. Thomason makes copies for David Watkins, Catherine Cornelius and himself. ATM says to me the Decker {Darnell met w Ed m} May 23 -- Bill Kennedy (and others?) meet with representatives (who?) of the FBI, seeking guidance on disturbing information discovered in the travel office. FBI confirms that there may be enough information to warrant further investigation.

May 13 -- David Watkins contacts Larry Herman of Peat, Marwick and asks the company to review travel office files.

May 14 -- Larry Herman and five other Peat, Marwick accountants begin review. Interview several members of the travel office (which ones?)

May 15 -- Peat, Marwick auditors brief members of White House counsel's office, administrative staff, and FBI about their findings. Based on information provided during the briefing, the FBI determines they have "predicate" to investigate.

May 19 -- David Watkins meets with four or five members of the travel office in Washington, including Billy Dale. Tells them they have been dismissed and asks them to clear out their belongings by day's end. Jeff Eller briefs Al Kamin of the Washington Post and George Condon of the White House Correspondents' Association. Dee Dee Myers briefs White House press corps at 2 p.m., confirms that FBI has been called and further investigation is "likely". Later that afternoon, George Stephanopoulos, Dee Dee Myers, Jeff Eller, David Watkins and

Larry Herman hold back ground briefing for wires and nets to provide more details. POTUS answers question during photo op; telling reporters inquiries should be directed to Mack McLarty.

May 20 -- George Stephanopoulos briefs White House press corps. Later that evening, Gene Gibbons of Reuter and Wolf Blitzer of CNN notify George that they have obtained the Cornelius/Cerda memo on restructuring the travel office. They agree to hold the story until George, Dee Dee and David can meet with their bureau chiefs the following morning. Sen. Christopher Bond releases letter, calling for a full accounting of travel staff firings before the Government Oversight Committee.

May 21 -- George, Dee Dee and David meet with Bill Headline, Wendy Walker and Wolf Blitzer of CNN and Bureau Chief and Gene Gibbons of CNN. Following meeting, they run story. George, Dee Dee, David, Bernie Nussbaum, Vince Foster, Bill Kennedy, David Dryer, and John Collingwood of the FBI then meet in George's office to review details surrounding dismissal. At the end of the meeting, John Collingwood returns to his office to update statement. Meanwhile, Peat, Marvick agrees to produce final draft of report. Meanwhile, Ann Devroy and Ruth Marcus notify George and Dee Dee that they have obtained copy of Martens memo. Dee Dee contacts Harry in Florida. He explains circumstances, says he will track down Darnell Martens. At 4:15, press staff hands out Peat, Marvick report, Cornelius/Cerda memo and the FBI statement. George briefs White House press corps. Later, Martens comes to the White House at Dee Dee's request. Calls Ruth Marcus from Dee Dee's office to discuss memo. POTUS is questioned during photo op with President of Cyprus, says change will save press 25 percent on first trip. Finally, George issued a statement late in the day stating the World Wide Travel had voluntarily given up the White House business.

May 22 -- POTUS travels to New Hampshire, talks extensively about the travel office during a session with local radio and television reporters. Press office distributes Martens memo to traveling reporters.

May 23 -- William Safire accuses White House of "politicizing" FBI during appearance on Meet the Press.

May 24 -- Safire column appears, outlining charge that White House politicized the FBI to justify firings. George briefs White House press corps. Press follows briefing with questions about Janet Reno's statement that proper procedures were not followed.

May 25 -- POTUS is asked during photo session about allegations that White House politicized FBI. He repeats answer that change in travel staff has saved press and taxpayers money and that further questions should be referred to McLarty.

CGEPR 0564

another white pad of notes on WH issues (eg,
use of military plane, cabinet retreat, ~~the~~ volunteers, etc

yellow pad of notes re transition

→ a dictaphone ← M: have someone
notepad listen to it;
very soon

(3)

briefcase ← Q: didn't carry briefcase
all the time?

BN: no; used as file
folder

blue file of memos

copies of newspaper articles not @ him

H's letter in Hillary
vw note

notebook of notes of meetings, GC issues

Man calendar M: books

minutes
minutes

memo on expenditures, gifts -
memo on GC issues

log of correspondence
receipts for
travel

letter to Ron from Delia

copies of newspaper articles
(nothing from VF)

newspaper art & VF (IPA)

Att. Encl. (picture of
staff when announced)

13 articles
last art on opt(s)

note pad w/ Hw notes re GC issues

WH travel etc. important rule

Standards of Political Conduct

memo on Clinton Pres Library

memo re gifts (ethics)

correspondence re transition

memos re WH functions, inaugural
docs & legal ops (OLC)

more
letter to B.
broader for
(included
resume)
Hw list of
people
from
transition

(4)

3rd/3rd drawer

memos re potential applicant

phone messages: 1/25, 1/26, 1/22, 1/27

stationery

Hw note from staff

M: look
from to see if
non-07/Hcs

(24)

ish

Returned

Eller - don't get behind story

has run by / brief / Geo & Dale and they agree

w/ what is more or less 5, 10, 15?

JE - last time, will go on background (can't)

tell him we are just doing work, need

to be out of middle of how, whether & when of

management decision, suggest he talk to David

(25)

HT - understand they can switch over immediately

(26)

Tell PT come on Eller, pass on HT comment while

he is not available, ask him to have DW call

PT unsure of ability to rule w/o procurement

(27)

Tell DW to discussion w/ JE end w/ HT

tell him we want get out of middle

suggest he call Eller

(28)

WK and PT

reports at end of day need to continue

- 7 of 17 chs to rank unsupported

* 24 / 45 discrepancy in record

Lasater & Company

INVESTMENT BANKERS

May 30, 1985

Mr. Bob Snyder
Executive Vice-President
T.J. Raney & Sons, Inc.
Investment Bankers
3600 Cantrell Road
Little Rock, Arkansas

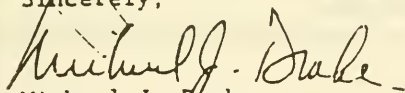
re: Legal services rendered to date:
Mitchell Law Firm

Dear Bob:

I am enclosing a copy of recent billings from the Mitchell law firm which have been paid by Lasater & Company. The legal services rendered, as you can see from the detail sheets, were in support and advancement of our group efforts on the Arkansas State Police Communications System Financing. Since we (Raney, Hutton, Lasater) agreed to split expenses, liability and fees on this transaction, we would appreciate receiving your check for one-third of these legal fees in the amount of \$10,716.98. I fully expect our group to be reimbursed for these expenses from bond proceeds and look forward to receiving your check as soon as possible.

Thank you in advance for your assistance in this matter.

Sincerely,



Michael J. Drake
Senior Vice-President

MJD:cb

encl.

cc: Dan R. Lasater
Rick Knox

LAW OFFICES

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

1000 SAVAN FEDERAL BUILDING
CAPitol AVENUE at Spring Street
LITTLE ROCK, ARKANSAS 72201
TELEPHONE 501-370-0181

March 15, 1985

Mr. Michael Drake
Senior Vice President
Lasater and Company
312 Louisiana Street
Little Rock, AR 72201

CLIENT NO 6039-

(PLEASE DETACH THIS PORTION AND RETURN WITH YOUR PAYMENT)

Re: Legal Services Performed
through February 28, 1985

FILE NO. 6039-4 - 1985 LEGISLATION ADVICE

FEES:	\$ 3,979.00
EXPENSES:	<u>342.51</u>
TOTAL AMOUNT:	\$ 4,321.51

FILE NO. 6039-5 - LEASING PROPOSAL

FEES:	\$ 4,081.00
EXPENSES:	<u>912.09</u>
TOTAL AMOUNT:	\$ 4,993.09

TOTAL AMOUNT DUE:	\$ 9,314.60
PREVIOUS BALANCE:	<u>22,836.33</u>
TOTAL AMOUNT DUE:	<u>\$32,150.93</u>

(ITEMIZATION ATTACHED)

LAW OFFICES

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

1000 SAVAN FEDERAL BUILDING
CAPitol AVENUE at Spring Street
LITTLE ROCK, ARKANSAS 72201TELEPHONE
501-370-0181DUPLICATE REPRODUCTION
NO PAY-NECESSARY

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

STATEMENT OF SERVICES RENDERED AS OF 2/28/85

CLIENT 6039 - LASATER & COMPANY

MATTER 4 - 1985 LEGISLATION - ADVICE

DATE	SERVICE PERFORMED
2/15/85	INTRAOFFICE CONFERENCE ANNE RITCHEY AND JOHN SELIG TELEPHONE CONFERENCE WITH MICHAEL DRAKE TELEPHONE CONFERENCE WITH WOOTEN EPES CONFERENCE WITH JOHN SELIG AND ANNE RITCHEY
2/18/85	CONFERENCE WITH WOOTEN EPES
2/19/85	INTRAOFFICE CONFERENCE ANNE RITCHEY AND BILL WOODYARD
2/20/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
2/21/85	CONFERENCE WITH DAN MOUDY CONFERENCE WITH JOHN NASH CONFERENCE WITH ELDON DANIELS
2/22/85	ATTEND INSURANCE AND COMMERCE COMMITTEE MEETING
2/24/85	REVIEW STEPHENS INTL'S ADFA BILL AND DRAFT MEMORANDUM
2/25/85	TELEPHONE CONFERENCE WITH FIRST PYRAMID INTRAOFFICE CONFERENCE BILL WOODYARD AND ANNE RITCHEY
2/26/85	DELIVER DOCUMENT TO DAN MOUDY AND MICHAEL DRAKE TELEPHONE CONFERENCES WITH LAUREL ESTERLEIN RE PROPOSAL
2/27/85	TELEPHONE CONFERENCE WITH DAN MOUDY

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

STATEMENT OF SERVICES RENDERED AS OF 2/28/85

CLIENT 6039 - LASATER & COMPANY

MATTER 5 - LEASING PROPOSAL

DATE	SERVICE PERFORMED
2/25/85	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG AND W. C. BARRIER TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN REVIEW AND REVISION OF LEGISLATION PREPARE BILL FOR DELIVERY TO E. F. HUTTON IN NEW YORK
2/26/85	CONFERENCE WITH PAUL YOUNG & MICHAEL DRAKE CONFERENCE WITH MESSRS. DRAKE AND YOUNG
2/27/85	INTRAOFFICE CONFERENCE ANNE RITCHEY AND JOHN SELIG CONFERENCE WITH MESSRS. DRAKE AND YOUNG CONFERENCE WITH COL. GOODWIN CONFERENCE WITH MICHAEL DRAKE, PAUL YOUNG, BOB SNYDER AND JOHN SELIG

LAW OFFICES

MITCHELL, WILLIAMS, SELIG, JACKSON & TICKER

3000 SOUTH FARMERS BOULEVARD
LITTLE ROCK, ARKANSAS 72201
TELEPHONE 501-426-1400

February 20, 1985

Mr. Michael Drake
Senior Vice President
Lagater & Co.
312 Louisiana Street
Little Rock, AR 72201

CLIENT NO. 6039-

PLEASE DETACH THIS PORTION AND RETAIN WITH YOUR PAYMENT TO INSURE PROPER CREDIT

Re: Legal Service: Performed
through January 31, 1985

FILE NO. 6039-4 - 1985 LEGISLATION ADVICE

FEES:	\$17,647.00
EXPENSES:	<u>676.13</u>
TOTAL AMOUNT:	\$18,323.13

FILE NO. 6039-5 - LEASING PROPOSAL

FEES:	\$ 4,154.00
EXPENSES:	<u>359.20</u>
TOTAL AMOUNT:	\$ 4,513.20

TOTAL AMOUNT DUE:	<u><u>\$22,836.33</u></u>
-------------------	---------------------------

(Itemization attached)

TELEPHONE
501-276-1400

MITCHELL, WILLIAMS, SELIG, JACKSON & TICKER

REGISTERED MAILING
TO FARMERS

MITCHELL, WILLIAMS, SELIG, JACKSON & THORNTON

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
1/04/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
1/07/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH E. F. HUTTON PEOPLE
	INTRAOFFICE CONFERENCE JOHN SELIG AND ANNE RITCHEY
	TELEPHONE CONFERENCE WITH E. F. HUTTON
	INTRAOFFICE CONFERENCE WITH BILL WOODYARD, ANNE RITCHEY AND JOHN SELIG
1/08/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	REVIEW E. F. HUTTON DOCUMENTS
	CONFERENCE WITH ANNE RITCHEY
	CONFERENCE REGARDING POLITICAL CONCERNS
	LEGAL RESEARCH REGARDING ISSUES PRESENTED BY HUTTON PROPOSALS
	INTRAOFFICE CONFERENCE ANNE RITCHEY AND JOHN SELIG
	LEGAL RESEARCH REGARDING BOND AUTHORITIES
1/10/85	LEGAL RESEARCH REGARDING PENDING BOND ISSUE QUESTIONS
	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG, BILL WOODYARD RE PROPOSED LEGISLATION
	ATTEND MEETING ON ECONOMIC DEVELOPMENT LEGISLATIVE PROPOSALS
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	CONFERENCE WITH ANNE RITCHEY AND JOHN SELIG
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE RE LEGISLATION
	CONFERENCE WITH MICHAEL DRAKE AND E. F. HUTTON

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

STATEMENT OF SERVICES RENDERED AS OF 1/11/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 1 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH MR. MEINZ
	CONFERENCE WITH MR. DRAKE
	WORK ON PROPOSAL
	CONFERENCE WITH HUTTON PEOPLE
1/10/85	CONFERENCE WITH E. F. HUTTON & LASATER PEOPLE TO PREPARE FOR PRESENTATION TO THE GOVERNOR
	ATTEND PRESENTATION TO THE GOVERNOR
	CONFERENCE WITH LASATER/HUTTON WORKING GROUP AND GOVERNOR'S STAFF
	CONFERENCE WITH LASATER & HUTTON PEOPLE
1/11/85	CONFERENCE WITH MESSRS. DRAKE AND NASH
	INTRAOFFICE CONFERENCE JOHN SELIG, ANNE RITCHEY AND BILL WOODYARD
	DOCUMENT PREPARATION AND REVIEW
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN RE DRAFT OF LEGISLATION
	INTRAOFFICE CONFERENCE BILL WOODYARD, JOHN SELIG, AND ANNE RITCHEY RE PROPOSAL TO GOVERNOR
1/12/85	REVIEW PROPOSED LEGISLATION
1/13/85	REVIEW LEGISLATION
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH PATSY THOMASSON
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
1/14/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE

MITCHELL, WILLIAMS, SELIG, JACKSON & FIDELL

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
	CONFERENCE WITH JOHN SELIG, PAT MORAN AND ANNE RITCHEY WORK ON LEGISLATION
	TELEPHONE CONFERENCE WITH MR. BEALE REVIEW PROPOSED LEGISLATION
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN REVISE PROPOSED LEGISLATION
	REVISE GUARANTY BILL DELIVER MEMORANDUM
1/15/85	DRAFT MEMORANDUM TO MR. NASH AND WORK ON RESPONSE TO HIM CONTINUE REVISION OF PROPOSED GUARANTY BILL
	INTRAOFFICE CONFERENCE BILL WOODYARD AND PAT MORAN RE LEGISLATIVE MATTERS CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE JOHN SELIG, ANNE RITCHEY, H. M. MITCHELL AND BILL WOODYARD TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE PREPARE AND TRANSMIT LEGISLATION
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE TELEPHONE CONFERENCE WITH MICHAEL DRAKE
1/16/85	TELEPHONE CONFERENCE WITH MR. JAMES INTRAOFFICE CONFERENCE BILL WOODYARD, JOHN SELIG, AND ANNE RITCHEY TELEPHONE CONFERENCE WITH MICHAEL DRAKE TELEPHONE CONFERENCE WITH MICHAEL DRAKE

MITCHELL, WILLIAMS, SELIG, JACKSON & FURKIN

STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN
	ATTEND MEETING ON LEGISLATIVE MATTERS
	DELIVER PACKAGE FOR MR. WOODYARD
1/17/85	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE BILL WOODYARD AND ANNE RITCHEY
	CONFERENCE RE LEGISLATION
	CONFERENCE WITH MICHAEL DRAKE
	CONFERENCE WITH JERRY JACKSON, JOHN SELIG, BILL WOODYARD AND ANNE RITCHEY
1/18/85	REVIEW REVISED DFA B LI. FOR GOVERNOR'S OFFICE
	PREPARE REVISED BILL FOR DISTRIBUTION
	INTRAOFFICE CONFERENCE ANNE RITCHEY, BILL WOODYARD AND PAT MORAN
	DRAFT MEMO TO ACCOMPANY REVISED BILLS
	INTRAOFFICE CONFERENCE JOHN SELIG, BILL WOODYARD AND ANNE RITCHEY
	REDRAFT LEGISLATION
	INTRAOFFICE CONFERENCE JOHN SELIG AND ANNE RITCHEY
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	INTRAOFFICE CONFERENCE PAT MORAN AND BILL WOODYARD RE LEGISLATIVE MATTERS
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE
	CONFERENCE WITH JOHN SELIG AND ANNE RITCHEY
1/19/85	TELEPHONE CONFERENCE WITH GOVERNOR'S OFFICE
	TELEPHONE CONFERENCE WITH MICHAEL DRAKE

MITCHELL, WILLIAMS, SELIG, JACKSON & THURM

STATEMENT OF SERVICES RENDERED . S OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 4 - 1985 LEGISLATIVE ADVICE

DATE	SERVICE PERFORMED
1/21/85	TELEPHONE CONFERENCE WITH MR. NEPTUNE
1/23/85	REVIEW GOVERNOR'S PROPOSAL TELEPHONE CONFERENCE WITH MICHAEL DRAKE DRAFT DOCUMENTS PREPARATION FOR CONFERENCE TELEPHONE CONFERENCE WITH GOVERNOR CLINTON'S OFFICE
1/24/85	CONFERENCE WITH LASATER AND E. F. HUTTON CONFERENCE WITH JOHN SELIG AND ANNE RITCHEY CONFERENCE WITH MESSRS DRAKE, ET AL. INTRAOFFICE CONFERENCE ANNE RITCHEY, ROBERT THACKER AND JOHN SELIG RE BONDS CONFERENCE WITH LASATER AND HUTTON REPRESENTATIVES TELEPHONE CONFERENCE WITH MR. POTTS RE LEGISLATIVE BOOKLET ATTEND MEETING ON LEGISLATIVE MATTERS CONFERENCE WITH LASATER AND HUTTON REGARDING LEGISLATIVE MATTERS LEGAL RESEARCH REGARDING SCHOOL REVOLVING LOAN FUND
1/25/85	LEGAL RESEARCH REGARDING RADIO EQUIPMENT LEASE
1/28/85	TRANSMIT DOCUMENTS TO STEVE BENDER RESEARCH ON LEASE CONFERENCE WITH THOMASSON, MOUDY AND DRAKE
1/29/85	RESEARCH RE STATUTORY AUTHORITY
1/30/85	REVIEW AND RESEARCH STATUTES
1/31/85	TELEPHONE CONFERENCE WITH MR. BEALE AND MS. ESTERLBIN

MITCHELL, WILLIAMS, SELIG, JACKSON & THURLEN
STATEMENT OF SERVICES RENDERED AS OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 5 - LEASING PROPOSAL.

DATE	SERVICE PERFORMED
1/08/85	LEGAL RESEARCH REGARDING ISSUES PRESENTED BY HUTTON PROPOSALS
	LEGAL RESEARCH REGARDING BOND AUTHORITIES
1/09/85	TELEPHONE CONFERENCE REGARDING LEGISLATIVE COUNCIL MEETING
	ATTEND LEGISLATIVE COUNCIL MEETING
	CONFERENCE WITH MR. DR. KIL
1/10/85	CONFERENCE WITH E. F. HUTTON AND LASATER PEOPLE TO PREPARE FOR PRESENTATION TO THE GOVERNOR
	CONFERENCE WITH LASATER/HUTTON WORKING GROUP AND GOVERNOR'S STAFF
	CONFERENCE WITH LASATER AND HUTTON PEOPLE
1/13/85	CONFERENCE WITH LASATER, HUTTON AND RANEY
	CONFERENCE WITH MESSRS. DRAKE, LOCKE, ET AL.
	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG AND BILL WOODYARD
	TELEPHONE CONFERENCE WITH LAUREL ESTERLEIN
1/24/85	CONFERENCE WITH LASATER AND E. F. HUTTON
	CONFERENCE WITH MESSRS. DRAKE, ET AL.
	INTRAOFFICE CONFERENCE ANNE RITCHEY, BILL WOODYARD, ROBERT THACKER AND JOHN SELIG
	INTRAOFFICE CONFERENCE ROBERT THACKER, JOHN SELIG AND ANNE RITCHEY
	REVIEW LEASING PROPOSAL
	INTRAOFFICE CONFERENCE BILL WOODYARD, JOHN SELIG AND ANNE RITCHEY
1/25/85	INTRAOFFICE CONFERENCE BILL WOODYARD, ROBERT THACKER AND JOHN SELIG

MITCHELL, WILLIAMS, SELIG, JACKSON & TUCKER

STATEMENT OF SERVICES RENDERED AS OF 1/11/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 5 - LEASING PROPOSAL

DATE	SERVICE PERFORMED
	INTRAOFFICE CONFERENCE ANNE RITCHEY AND ROBERT THACKER
1/29/85	INTRAOFFICE CONFERENCE BILL WOODYARD AND JOHN SELIG
	INTRAOFFICE CONFERENCE ANNE RITCHEY, JOHN SELIG AND ROBERT THACKER RE LEASING AUTHORITY
1/30/85	INTRAOFFICE CONFERENCE ROBERT THACKER AND ANNE RITCHEY RE LEASES
	INTRAOFFICE CONFERENCE ANNE RITCHEY AND BILL WOODYARD RE PROJECTS FOR LASATER

MITCHELL, WILLIAMS, SERIO, JACKSON & TUC. INC.

STATEMENT OF SERVICES RENDERED . S OF 1/31/85

CLIENT 6039 - LASATER AND COMPANY

MATTER 5 - LEASING PROPOS. L

DATE	REIMBURSABLE EXPENSES	AMOUNT
1/23/85	CHECK TO THE LITTLE ROCK COUNTRY CLUB	\$359.20
	TOTAL EXPENSES	\$359.20

113) subject of a criminal investigation?
 114) A No one on the Governor's staff discussed
 115) Mr. Lasater's criminal investigation with me.
 116) Q Do you have any knowledge whether anyone
 117) on
 118) the staff knew about it?
 119) A I have no knowledge of that.
 120) Q Do you know who Roger Clinton is?
 121) A Yes, I do.
 122) Q Do you know him personally?
 123) A Yes, I do.

Page 85

124) Q Did you know him during this time period
 125) 1982 through 1986?
 126) A I knew him before 1982 and I knew him
 127) through 1986 and I continue to know him today.
 128) Q Did you ever have any personal contact with
 129) him between 1982 and 1986?
 130) A I saw him at a lot of social events during
 131) that period of time.
 132) Q Did Governor Clinton make a request to
 133) Mr. Lasater during this time period to find Roger
 134) Clinton a job?
 135) A He asked him to put him to work, yes.
 136) Q How do you know that he asked him to put
 137) him to work?
 138) A Because Mr. Lasater told me he asked him to
 139) put him to work.
 140) Q When did he tell you that?
 141) A Sometime about the time he put him to work.
 142) Q Do you know when that was?
 143) A Sometime in 1982-83.
 144) Q Do you know how the subject came up of the
 145) Governor's request -

Page 86

146) A I have no idea.
 147) Q - to give Roger a job? Did he say why the
 148) Governor asked Mr. Lasater to get Roger a job?
 149) A As far as I know, from my recollection of
 150) the conversation, he wanted him to be doing
 151) something
 152) where he was using his energy up, so we put him to
 153) work shoveling manure.
 154) Q I have done that and I can tell you it does
 155) take quite a lot of energy.
 156) MR. COLE: It will use your energy up.
 157) MR. WILLIAMS: The same words of General
 158) George Patton
 159) BY MR. O'CALLAGHAN:
 160) Q The Committee appreciates your genteel
 161) choice of words
 162) A Mucking buystalls.
 163) Q Were you ever told of any specific reason
 164) the Governor asked Mr. Lasater to find Roger Clinton
 165) a job?
 166) A The only recollection I have with that is
 167) Roger liked horses, he liked the horse racing
 168) business and thought he wanted to be in the horse

Page 87

169) racing business. He wanted to be in something where
 170) he could use his energy up and maybe get started in
 171) something he could make a career. The only way to
 172) start in the horse racing business is to start from
 173) the ground up.
 174) Q Literally.
 175) A He is a little too heavy to be a jockey.
 176) Q Did Mr. Lasater eventually give Roger
 177) Clinton a job?
 178) A He was on the farm payroll in Florida and
 179) worked at the farm in Florida.
 180) Q Do you know how long he worked there for?
 181) A I don't have any idea.
 182) Q Are you aware whether during this time
 183) period that Mr. Lasater loaned any money to Roger
 184) Clinton?
 185) A Mr. Lasater did loan some money to Roger
 186) Clinton, yes.
 187) Q How do you know that?
 188) A I think -
 189) MR. COLE: Again, for the sake of the
 190) record, sorry to interrupt, I do want to note the

Page 88

191) Minority's objection to this line of questioning and
 192) also just to bring that to your counsel's attention.
 193) Once again, I will not instruct you now to
 194) answer the question, because I think the more fair
 195) thing to do for you is to get this deposition over
 196) with without delaying any further. Do you need the
 197) question read back?
 198) THE WITNESS: Please.
 199) BY MR. O'CALLAGHAN:
 200) Q I will restate it. How do you know
 201) Mr. Lasater loaned Roger Clinton money?
 202) A Mr. Lasater told me to write a check and
 203) get a note signed by Roger.
 204) Q Did you write a check for Mr. Clinton?
 205) A Roger got a check, yes.
 206) Q How much was the check for?
 207) A I don't recall specifically. It was
 208) somewhere, I would say, between 5 and \$10,000.
 209) Q Out of what account was the check drawn?
 210) A I don't recall.
 211) Q Do you recall whether it was his personal
 212) account or the company's accounts?

Page 89

213) A I don't recall.
 214) Q Was it on Lasater & Company account?
 215) A It would not have been on Lasater &
 216) Company, because I couldn't control that checking
 217) account.
 218) Q And you said - he asked you to get Roger
 219) to sign a note?
 220) A Yes.
 221) Q What do you mean by that? Could you
 222) explain?
 223) A Mr. Lasater was not in the habit then of
 224) giving money away, and if he lent Roger money, then
 225) he would expect Roger to sign a note back to him

1987 BANK BRANCHING LEGISLATION

- 1/8/87 1ST OZARK LOAN COMMITTEE MEETING --
RENEWAL OF WHITEWATER LOAN IS
CONDITIONED ON RECEIPT OF FINANCIAL
DISCLOSURE STATEMENTS FROM THE CLINTONS
AND McDOUGALS.**
- 1/87-3/87 TWIN CITY PRESIDENT EDWARD PENICK WRITES
TO HILLARY CLINTON TO ASK FOR FINANCIAL
DISCLOSURE STATEMENT.**
- 3/24/87 CLINTONS PROVIDE FINANCIAL DISCLOSURE
STATEMENT TO 1ST OZARK.**
- 3/26/87 1ST OZARK EXTENDS WHITEWATER LOAN.**
- 4/1/87 GOVERNOR CLINTON SIGNS SPECIAL
LEGISLATION ALLOWING TWIN CITY BANK TO
ENTER LITTLE ROCK BANKING MARKET;
CREATES LOOPHOLE IN ARKANSAS LAW
PROHIBITING BRANCHES WITHIN 300 FEET OF
ANOTHER BANK'S OFFICE.**

1988 BANK BRANCHING LEGISLATION

- 5/88-7/88 TWIN CITY AND FIRST COMMERCIAL BANK
FIGHT OVER CLOSING "300 FOOT" BRANCHING
LOOPHOLE.
- 7/3/88 GOVERNOR CLINTON CALLS SPECIAL
LEGISLATIVE SESSION TO CONSIDER "OMNIBUS
BANKING BILL."
- 7/5/88 EDWARD PENICK THANK-YOU NOTE TO
GOVERNOR CLINTON RE: ELIMINATION OF "300
FOOT" BRANCH RESTRICTION.
- 7/15/88 1ST OZARK WAIVES REQUIREMENT THAT THE
CLINTONS AND McDOUGALS SUBMIT FINANCIAL
DISCLOSURE FORMS.
- 1ST OZARK EXTENDS WHITEWATER LOAN
THROUGH 11/3/91.
- 7/15/88 GOVERNOR CLINTON SIGNS OMNIBUS BANKING
BILL WITHOUT "300 FOOT" BRANCH
RESTRICTION.

Bill - 1 (at 10:15)

7-5

It has been reported to me
your assistance on the Omnibus
Banking Bill and the 300
foot provision and I wanted
to relay our appreciation
for taking this stand. Terry
and I can't understand why
Mr. Bowen feels so threatened
by our little office in Capitol
Tower. It is almost a backhand
compliment that he thinks we
are that good.

Thanks for your support
and friendship.

3016

SP 12 - Bank Corn

7/5/88

TO: Gov

FROM: Betsey

RE: Bankers Bill

cc: Sam

Neither Sam nor I understands what your next step/followup with Bill Bowen is on the 300' issue.

The bill which is being delivered to this office in the morning by the Bankers Association/Bill Ford does not contain the 300' provision based on their conversation with you this morning.

CC
HC
SE

DOCUMENTATION REQUEST

TO: CREDIT DEPARTMENT

FROM: RON PROCTOR

DATE: July 15, 1958

RE: DOCUMENTATION REQUIREMENT

BORROWER NAME: Whitewater Development Co., Inc.

NOTE NUMBER: R-5865

DOCUMENT: Personal Financial Statements of Guarantors and Financial Statements of

REASON FOR REQUEST: 1) Payments on loan are derived from escrow contracts

controlled by FONS.

2) Collateral is sufficient to cover the loan.

THIS REQUEST IS EFFECTIVE FOR THE TIME STATED BELOW:

_____ Permanently.

☒ Term of this note only.

_____ Extension until _____ only.

REQUESTING DEAN OFFICER

APPROVED BY

CONFIDENTIAL—PRODUCED BY THE RTC TO THE
HOUSE COMMITTEE ON BANKING AND FINANCIAL
SERVICES

PM&S02263

CBF 0411

3018

FILE NOTES
May 27, 1986

State Bank Department

Today I visited with Commissioner Marlin Jackson concerning the prospects of TCB refiling a branch application for either Gravel Ridge or Kiehl Avenue and asked his reflection of the current attitude of the State Banking Board. He was quick to point out that the banking law has changed and under existing law, the State Bank Commissioner can approve a branch application as long as it is economically feasible and there is no irreparable harm done to a competing financial institution. His ruling can be appealed to the full board for its vote. He personally saw no support for Gravel Ridge, but felt that Kiehl Avenue could be a profitable branch.

The existing members of the State Banking Board are familiar names to us. The current Chairman of the Board is T. E. Patterson. Elmer Ferguson has passed his appointment time, but is still serving until a replacement is named. The Commissioner speculated that Doug Simmons, who is in the state bank at West Helena would be Ferguson's replacement; and he was surprised that Simmons hasn't been appointed already. Betty Wilkerson, Franklin Collier, Dr. Ralph Ratton and Bill Ford round out the State Banking Board.

The Commissioner also mentioned that, in his opinion, it was time for somebody to foster legislation to permit county-wide branching. The legislation could be restricted in counties with over 100,000 population so that only Pulaski County could be affected. He felt there was a good chance the legislation would be approved.

He questioned the practical issue of whether the State Banking Board would overrule a commissioner's approval of a branch. To date, this has not happened and he felt the only member, based on his gut reaction, to vote against it would be Betty Wilkerson.

In my opinion, knowing these individuals, the prospects don't sound much better than they have before despite a change in the law. I would feel that Hastings and Harkins would definitely appeal the issue to the State Banking Board and probably rally Pat Wilson on their side; and you would have the same issue of the big bank versus the little bank that defeated us the last go round. It would be interesting to casually feel out our state delegation to determine if there would be support for county-wide branching, but I'm not too optimistic here either knowing the influence of Max Howell and the close association he has with Pat Wilson.

Edward M. Penick, Jr.

/rc

cc: T. E. Renaud
Bob Birch
Margaret Davenport



From the Desk of

EDWARD M. BENICK, JR.

0-0-00

Governor Bill Clinton

Bill, the attached copy is revised slightly from the previous one you have been furnished. I've highlighted the two changes for your information.

In an additional note, on behalf of the Arkansas Association of Building Companies Board, I've accepted this position. The office will come from the organization shortly.

If you have any questions, please don't hesitate to contact me.

EMP:--

Enclosure

3020

Is. Ozark National Bank

P O BOX 250

FLIPPIN AR 72624

TELEPHONE SO 453-2295

J. WESLEY STRANGE PRESIDENT

April 12, 1988

Hillary Clinton
120 E. 4th Street
Little Rock, AR. 72114

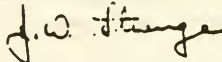
Dear Mrs. Clinton:

As per our phone conversation, we have researched the transaction regarding the Whitewater Development Company, Inc. and they are enclosed. The loan and escrow data are for 1987 only and do not include any of 1988 transactions. Hope this will help you in preparing your tax returns and some type of balance sheet.

I have also enclosed a renewal note, hoping that you could help me in getting all the signatures on this and returning it as soon as possible.

In addition, we will be needing an updated financial statement on the personal, as well as the corporation.

Respectfully,



J. W. Strange

JWS/rjo

Enclosures

- April 6, 1988

LOAN

Whitewater Development, Inc.	
Balance as of 12/31/87	15,348.72
Balance as of 1/1/87	53,161.52
Principal paid during 1987	5,018.30
Interest paid during 1987	5,812.80

ESCROWS

Stanley Yancey	
Balance as of 12/31/87	12,918.76
Balance as of 1/1/87	11,198.63
Principal paid during 1987	1,620.13
Interest paid during 1987	1,379.87

Stanley Yancey	
Balance as of 12/31/87	9,504.80
Balance as of 1/1/87	9,923.85
Principal paid during 1987	419.05
Interest paid during 1987	580.95

Mr. D. BLAIR

Balance as of 12/31/87	1,788.03
Balance as of 1/1/87	4,195.46
Principal paid during 1987	1,407.43
Interest paid during 1987	332.57

WILLIAM BUTLER

No activity during 1987

FOREST DURRETT

No activity during 1987

BILLY HORN

Balance as of 12/31/87	1,479.04
Balance as of 1/1/87	1,490.45
Principal paid during 1987	1,011.41
Interest paid during 1987	495.19

HILMAS LOGAN

No activity during 1987

DOUGLAS MURDOCK

Balance as of 12/31/87	3,303.09
Balance as of 1/1/87	4,456.17
Principal paid during 1987	1,163.06
Interest paid during 1987	418.92

CLYDE SOAPES

Balance as of 12/31/87	4,337.10
Balance as of 1/1/87	6,340.98
Principal paid during 1987	2,003.62
Interest paid during 1987	683.71

ROSE L. W. FIRM

A PROFESSIONAL ASSOCIATION

ATTORNEYS

120 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201

TELEPHONE 11 311 378-8131

TELETYPE 11 311 378-1308

U. N. 1086

1834 81.

RECEIVED BY:

JUL 14 1988

July 13, 1988

PHILLIP CARROLL
W. BANE CLAY
GEORGE E. CAMPBELL
HERBERT C. RULE, III
W. WILSON JONES
VINCENT FOSTER, JR.
WEBSTER L. HUBBELL
ALLEN W. BIRD II
WILLIAM C. BISHOP
WILLIAM RODHAM CLINTON
C. BRANTLY BUCK
TIM SOE
H. JAMES DICKEY
WILLIAM M. KENNEDY, III
KENNETH R. BENNIN
RONALD M. CLARK
GARLAND J. GARRETT
JERRY C. JONES
THOMAS P. THRASH
CHARLES W. BAKER
DAVID L. WILLIAMS
CAROL S. ARNOLD

JACKSON FARROW JR.
LES R. SALEDGE
JIM HUNTER BIRCH
R. GAVIS THOMAS, JR.
KEVIN R. BURNS
RICHARD T. DONOVAN
RICHARD N. HASSEY
GARY H. SPEED
MICHAEL P. LAR
H. ELIZABETH GOFF
SARAH C. HOOD
MICHAEL B. JOHNSON
KEITH M. JOHNSON
S. MICHAEL BENNETT
THOMAS C. VAUGHAN, JR.
JAMESON GRUFF
ELANA D. CUNNINGHAM
JAY F. SNELL
DORDON M. WILSON

J. GASTON WILLIAMSON
OF COUNSEL

Mr. J. W. Strange
1st Ozark National Bank
P. O. Box 250
Flippin, AR 72634

Dear Wes:

I am enclosing the renewal note you sent for Bill's and my signature. Despite repeated efforts, I have been unable to reach the McDougals.

Thank you for your assistance in this matter. With best regards, I am,

Sincerely yours,

Hillery Rodham Clinton

HILLERY RODHAM CLINTON

HRC:ckp

Encl.

1787

Hillary Rodham Clinton

Notes on T/C w/ M. Davenport

56,623 balance

2,303.75 Oct 3

5 yr amortization

w/ 2 yr balloon 12/3

note secured by mortgage
received Aug 31/87On 171 Gies Run as
Whiteoater estate

original \$100,121 note

DKRT700294

CONFIDENTIAL

Q D-149. It's entitled *Enc Notes, Whitewater Development, Inc. Loan 585*. It's dated 1/6/87. (Handing document to witness.)

(Pause.)

THE WITNESS: Okay.

BY MR. NAPPI:

Q Do you recall preparing this?

A Yes.

Q Could you explain the circumstances?

A It was a renewal of the loan. As is very common, you make a collateral inspection at the renewal origination of the loan, especially you know, in a situation where you've got properties that are being constructed on, as in this case.

Q Was this the first such collateral inspection you'd done?

A It was the first one I had done.

Q On this piece of property?

A Right.

Q I'd like to direct your attention to the second page, the last paragraph. You value the lots

Page 53

at \$750 per acre. Initially the lots had been

valued, I believe, at \$1,100 an acre.

A I believe that's correct, yes.

Q What do you attribute the devaluation to?

A Primarily from what I've said on the front because of the quality of homes and the lack of homes that had been built there when it was clean, and a new subdivision, I think \$1,100 was a fair price or value.

After the mobile homes sprung up and a few other things, it devalued the property.

Q What were the other things?

A Trash, just general refuse.

Q You value the contracts receivable at

\$60,000 and change. I'll be more precise - \$60,786.

I would take it that's a fairly easy evaluation to make. You just compile what's on the various contracts for deeds?

A Yes. Just take the outstanding balances.

Q And the remaining unsold property at

\$43,350?

A Yes.

Page 54

Q Was that remaining unsold property the property that had been transferred to Chris Wade?

A Partially, yes.

Q Do you recall whether Whitewater still owned some unsold lots at that point in time, or is that your recollection?

A I don't recall. I'm not sure.

Q Just so the record's clear, you're not sure who actually owned the remaining unsold property?

A No.

Now, I need to clarify that, too. The reason for that is that we were not - It did not make any difference to me in this bank who owned it

because I had the mortgages on the lands.

Q You had the right to go in and foreclose if need be?

A True.

Q The next record I'd like to show the witness, again it's a one-page record. It's a copy

of notepaper that has printed on the top Hillary Rodham Clinton. It's personalized notepaper, and it

Page 55

contains handwritten notes. The Bates stamp number is DKRT 00294.

(Handing document to witness.)

MR. BELMAN: I think just for the record,

you identified this as DKRT 00294. It's DKRT 700294.

BY MR. NAPPI:

Q Do you know a woman named Margaret Davenport?

A Yes, I do.

Q How do you know Margaret?

A Margaret was executive vice president at Twin City Bank up till a year or two ago.

Q Did you ever have any contact with

Margaret Davenport regarding the Whitewater loan?

A No.

Q Did anyone at First Ozark ever tell you that they had had contact with Margaret Davenport regarding the Whitewater loan?

A No. It was my understanding that someone was going to speak with Margaret to help convey some

information to Mrs. Clinton concerning the renewal of

the loan.

Page 56

Q Who was that person?

A That would have been Ed Penick, who was chairman of our board at that time.

Q How did you come to know this?

A This was discussed in a board meeting.

Q Do you recall the date of the board

meeting?

A No. You saw how poorly I did on dates earlier. So I'm not going to try that.

Q Can you explain the circumstances around Mr. Penick's inquiry?

A We were having some difficulty getting financial statements, as we had often had with this loan. And we had asked - we had discussed that that was one of our deficiencies - not the only deficiency we had. But we were talking about deficiencies, the sensitive nature of the deficiency because of Mr. Clinton being the governor.

And Mr. Penick says, "Well, gosh.

Margaret and Hillary are personal acquaintances.

Let

me ask and see if she can help you get the financial statement."

Page 57

A Yes, he did.

Q What was that role?

A I don't recall.

Page 26

Q But he was a member of the Board of

Directors?

A As I recall, he was.

Q Do you know on individual named Terry

Renaud?

A Yes, I do.

Q How do you know Terry Renaud?

A He was Chairman and CEO of Twin City

Bank.

Q Was he also on the board at First Ozark?

A Yes, he was.

Q Did you know Susan Sisk?

A Yes, I do.

Q Who was Susan Sisk?

A She was our senior credit officer from

Twin City Bank.

Q What does that mean?

A That means in the beginning, she drove up every Thursday or Friday - I think it was Thursday - to our loan committee.

Q At the beginning? You mean?

A When Twin City Bank first purchased us.

And any loan request over X dollars, I don't remember

Page 27

what those dollars were, had to go through her.

Q Did that practice continue or did it change in any way?

A When I left First Ozark it had changed. She was no longer required to sign off on any loan requests.

Q Did she also have to sign off on renewals?

A No. If it was over a certain dollar amount, she did. I don't know what that dollar amount was.

Q So renewals and loans over a certain threshold?

A Yes.

Q Do you recall when she stopped actually participating in the loan officers meetings?

A No, I do not. It had to be like late '89 or early '90, I would imagine.

Q Do you know on individual named Margaret

Davenport?

A Yes, I do.

Q How do you know her?

A She was senior vice president and cashier

Page 28

at Twin City Bank.

Q Did she have a role in the operation of

First Ozark?

A No, not that I'm aware of. That was Ken

Pennebaker, but he's dead now.

Q Could you spell that name?

A P-E-N-N-E-B-A-K-E-R.

Q Do you recall any discussions regarding the Whitewater loan that involved Mr. Penick?

A Yes.

Q Could you tell us about them?

A I don't remember specifics, but I know that Ed was there, Ed Penick. Susan Sisk was there. Ron was there. I'm not sure Wes was. And we were discussing the financial statement on the Clintons. And Ed said that Margaret was personal friends of Hillary's and Susan said something to the effect that yes, she thought she was. Ed said that he would get Margaret to call Hillary and see if we could get a financial statement.

Q Do you recall what financial statement, or when this occurred?

Page 29

A No, I don't. This is a memory in my head.

Q Do you know if Mr. Penick asked Davenport to get a financial statement?

A No, I don't.

Q Do you recall if the financial statement was obtained?

A I do not recall getting a financial statement.

Q Is that the only recollection you have of a conversation regarding a Whitewater loan with Penick?

A With Mr. Penick, yes.

MR. PORTNOY: Can I ask him to clarify his last answer?

Did you testify that you did not receive a financial statement from the Clintons, or that you do not recall whether you received a financial statement?

THE WITNESS: I do not recall whether we received one or not.

MR. PORTNOY: Thank you.

BY MR. NAPPI:

Page 30

Q You just indicated that's the only conversation you recall with Mr. Penick.

Do you recall conversations with other

persons regarding the Whitewater loan?

A Well, I recall conversations with Ron and Wes. This loan was discussed quite often at the bank. It was a nuisance at the bank. It was

continuously past due at the bank. It was continuously pulled by auditors to audit. And it was continuously noted that financial information was lacking. And we discussed periodically what to do with the loan. I guess none of us liked it. It was there at the bank because of these things because we were continuously raked over the coals.

Q Raked over the coals by?

A I guess raked over the coals may not be the right word, but the officer, the Comptroller of the Currency auditors were always on us about not having proper documentation in the file.

Q With this loan more so than other loans?

Sp 585 III - mem.

30/30 Carull, W. Harley Field
Jan 25

operation - TCB, National Bank Union, maybe Trowen --
Said he will present spec -

Will ~~work~~ place S/L under same restrictions on
branching as apply to banks - McFadden Act allows
each state to control branching

Harfield acknowledges that if this could get
Reg bank in spec

Also acknowledges that any litig on this would
take over a yr - feasible -- but applicant would
get charter from Comptroller and be in business
unless DOT enjoin issuance or use of charter -

572-3481 TF Doug Simmons - Helene (w) Helene - wants Gov to put
S/L branch repeal in - he thinks it wouldn't be
controversial, told him that Carull had said would
be opposed, also would allow Reg Interstate

RTF B. Ryburn re S/L branching - out let's message

RTF - P. Berry - hopes Gov would put it in -

4/19/78

TO: Gov

FROM: Bezzev

RE: Terry Renaud

cc: Sam

I had lunch with Terry Renaud and Margaret Davenport today. I actually would not have agreed to an appointment to discuss the bank special session and would have insisted on them talking to Sam, except that Margaret has been very standoffish to me since her own attempt to be appointed bank commissioner. I knew that if Terry Renaud asked her to set up lunch with me, I had to do it for her.

Well, I wish I understood all these issues, but I will try in my feeble way to set them forth.

1. Terry says there is no way to declare this a "state" emergency. Most of the elements of the omnibus bill will pass in the January session regardless of the state-charted S&L issue.

2. The idea that this has to happen before Comptroller of the Currency grants any of the pending applications flies in the face of the speed with which that office operates. Terry says that even if something greased them through before January without the usual federal delays and extensions, Bill Ford could file in court the very next day asking to enjoin the Comptroller just like they did in Mississippi. That for sure would delay til the regular session he said.

3. Even if everybody gets here to a special session saying they are for the bill, there will be lots of amendments and he says it will be a major fracas and predicts only one tiny portion will survive. EVEN I QUESTION WHETHER THE BANKERS CAN GET A FIRM COMMITMENT FROM THE MEMBERS OF THE RELEVANT COMMITTEES TO SUPPORT THEIR BILL ONLY WITH NO AMENDMENTS.

4. Terry says that if he were in an S&L, he would move in with resentment that bankers were utilizing one of their provisions to bargain their own deal. One way or the other S&L's will inject getting state deposits into the battle, increasing the fray.

5. Terry says that the important goal is the preserve the dual banking system, and that it would be an emergency if applications were granted and all state banks started moving to federal charters. The Arkansas Bank Department would then face an emergency situation cause they wouldn't have funding. And the dual banking system would be threatened. Terry says that the

solution here is to give identical powers of the Controller to our Bank Commissioner, not this legislation.

6. He, and he says other like-minded bankers, are unwilling to be overt in opposition to this bill; he doesn't oppose it. He says there is no emergency and it will be a donnybrook, no matter how many legislators say they are for the bill.

7. He says that most banks in this state did not participate in the "vota"

8. He is fearful that a donnybrook in a visible special session will seriously impair what he believes the big crisis to banks to be: going to the people to change the usury rate.

I know I have not done this justice; I also know I am looking for any way out of a special session on this; I also know that the calls I am getting from legislators reflect no understanding on their part of the "emergency" involved or what amendments, etc. might be attempted.

OFFICE OF THE GOVERNOR



MEMORANDUM

To: Governor Bailey *EB* Date: April 23, 1998

From: Sam

Subject: Special Session

Seven called this morning to inquire as to what I thought were the possibilities for a special session. His assessment based on discussions primarily with First Commercial's correspondent banks is that an overwhelming majority of the banks out in the state are expressing support for the proposed legislation but that many of them are "paying lip service" to agreeing and continue to gripe about various specific provisions of the bill and that most of them are not really working that hard on their legislators. He also said it was his impression that "CS is attempting to be a spoiler".

I also received a call from Charlotte May of the Arkansas Association of Bank Holding Companies who said that a telephone survey of the Holding Companies membership at the end of last week indicated that 72% of that group favored the bill, 18% were opposed to it and 10% were neutral. On the question of whether the special session should be held to consider the issue, 57% were for a session and 43% were opposed. According to Charlotte, roughly half the banks in the state are members of the Bank Holding Company Association and, while she declined to be pinned down as to a specific number of banks that were contacted, she said that only two or three of the Association's membership did not respond to the survey.

Also attached are recent correspondence on this issue.

Attachments

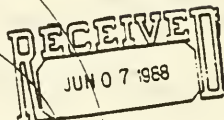


EDWARD M. PENICK
PRESIDENT

The Twin City Bank

THE TWIN CITY BANK
400 CAPITOL AVENUE
LITTLE ROCK, ARKANSAS 72202

MAY 27 1988



Mr. Martin Jackson, President
First State Bank & Trust Company
P. O. Box 109
Conway, Arkansas 72032

Dear Martin:

As you know, Twin City Bank and State Bank Commissioner Ford are defending Act 539 of 1987 in a lawsuit brought by First Commercial Bank and others. An attempt is being made to inject this litigation into the debate over the proposed Omnibus Banking Bill. This letter is written for the purpose of clearly setting forth the situation and position of TCB in this controversy.

TCB does not oppose the bill. Our reluctance is based in the effect of one part of the bill that seems disregarded totally by us and this litigation.

Act 539 of 1987 passed overwhelmingly: 30 to 13 in the House, 23 to 10 in the Senate. Under its provisions, TCB applied for, and was granted, five permits to branch in Little Rock. No objection was raised in the application process despite all appropriate notices being sent by the State Bank Department. First Commercial Bank and its allies ignored a direct attack of our permits in Circuit Court, the established statutory means of challenging the Bank Commissioner's approval. *deleted phrase or construction* Instead, they challenged the action of the Bank Commissioner after our permits were granted and without naming TCB as a party. In fact, we were not even brought into the case until after we had gone to the expense of actually opening our branch at 400 Capitol Avenue, which is the financial center of the ~~major~~ metropolitan area of the state. It was only at this point that First Commercial tried to close our Capitol Avenue Branch while the lawsuit was being decided. They failed.

Simultaneously with this litigation, the banking community was taking steps to develop a comprehensive state solution to disparities in the branching authority of banks and savings and loans. Initially, drafts of the Omnibus ~~Bill~~ Bill were circulated which were consistent with TCB's branching initiatives made possible by Act 539 of 1987. A meeting was held by the

May 11, 1968
Page - 1 -

Arkansas Bankers Association on May 11, 1968, a meeting to which TCB was not invited. At that meeting, we understand, representatives of First Commercial inserted a 100 foot provision which was calculated to interfere with our established Capital Avenue branch. A grandfather clause was included but its wording may be insufficient to protect that operating branch.

As initially stated in this letter, TCB wants to support the proposed bill. However, we must have reliable assurance that the wording "grandfathered in" any operating branch. We appeal to your sense of fairness and ask for your support to enable TCB to fully and actively support this bill by contacting your legislators and securing their consent to adopt a grandfather provision that states:

"Any bank may, at its option, operate any branch office, teller's window, or other banking facility which is separate from the main office of the bank and in operation on May 11, 1968 as a full service branch or a customer-bank communications terminal."

Yours truly,

Edward M. Perlow, Jr.

EMP:rc

JRTS 00143



FIRST COMMERCIAL BANK

July 7, 1978

PERSONAL AND CONFIDENTIAL

Governor Bill Clinton
 State Capitol
 Little Rock, AR 72201

RE: Arkansas Bankers Branching/Interstate Banking Legislative Initiative
 for Presentation to the Special Session

Dear Governor:

You invite me to remove from the captioned ABA package, the so-called "home office protection" feature. It prohibits branching within 300 linear feet of the principal office of an existing bank. This feature is in the existing law and has been since 1973.

Your invitation presupposes that I have the right to remove this feature and that it lacks the support of bankers and legislators. To support the latter point, you advise that some 15 bankers and legislators have told you they don't like it. This information apparently came to your attention in the July 5 morning meeting with Bank Commissioner Ford, Former Commissioner Jackson, ABA Past President Hartsfield, Senator Beebe and Representative Wilson. This minority view you cite is not surprising. It contrasts with endorsement by 80% of bank CEO's attending a statewide meeting in March and with an ABA legislative head count of 65% support for the bill as a package.

My response to your invitation was to ask you to sleep on it; you invited me to find support for inclusion of the home office protection feature.

The leadership of the ABA is as follows. I have consulted them all except Rainwater.

President:	Sloan Rainwater (hospitalized with heart surgery)
President-Elect:	Sonny Henson, Fort Smith
Treasurer:	Al Rusher, Brinkley
Group Chairmen:	C. L. Lieblong, Paragould; Larry Nelson, Mountain Home; Rick Parsons, Springdale; Bob Burns, Magnolia; Curtis Hutchins, Fordyce

Leaders, in addition to these, with whom I have visited include Walter Turnbow, Springdale; W. E. Ayres, Simmons, Pine Bluff; Bob Gantt, First National, Magnolia; and Cecil Culp, Jr., and Ray Cash, Arkansas Bank and Trust, Hot Springs.

July 7, 1988
Page Two

To 2 men, each of these leaders endorsed the entire legislative package and specifically the home office protection feature, and Barnett Grace, President of First Commercial Bank, confirmed with Jim Walton his support. *

If the home office protection feature is excluded and the suit in Pulaski Chancery repudiated which challenges Act 539 of 1987, TCB will be left in place in the TCBY Tower within 300 linear feet of this building. If the ABA bill as proposed is passed and TCB loses the suit, as my lawyers confirm and I am confident they will on July 14, they can relocate just outside the 300 foot parameter of existing law and there join the Worthen, the Union, OneBank, First Commercial, Savers, Capitol Savings and Loan, First Federal, Home Savings, and Superior Federal, all within a stone's throw of 5th and Broadway.

What is your guidance? I am committed to support this legislative initiative, as is or as reasonably modified. I prefer the widely supported ABA package.

Cordially,

William H. Bowen
William H. Bowen
Chairman of the Board

WHB:ccb
d4/cc

cc: Governor Bill Clinton
1800 Center Street
Little Rock, AR 72206

JRTS 00205

*Ray Morgan*FILE NOTES
March 14, 1986

RE: Branching

Wayne Hartsfield, President of the Arkansas Bankers Association and President of the First National Bank of Searcy, visited with me today concerning a proposal he is working on to settle the Branch Banking dispute.

Hartsfield has an agreement with the Governor to call a special session upon full concurrence and commitment of the bankers and banking organizations in the state to support the legislation. The Bank Commissioner is supportive of the legislation and Marcus Halbrook, Retired Director of the Arkansas Legislative Council, is drafting the bill. A draft copy will be forwarded as soon as Hartsfield receives it.

The key provisions of the bill are as follows:

1. Interstate reciprocity with approximately 15 states will be approved, effective January 1, 1989.
2. County-wide branching will be approved, effective January 1, 1989.
3. Contiguous county branching would be phased in over a period of five years.
4. Statewide branching would be phased in over a period of 10 years.
5. Incorporated communities with less than 3,000 in population and a bank charter will be protected from branching from the outside. However, if banks in these communities branch out, then reciprocity will follow banks in the communities where they branch.
6. Branching statewide could be accomplished by acquisition or merger under the 10 year phase-in.
7. State chartered savings and loans will be covered under the state branching bill as state banks.
8. The current statewide branching applications with the Comptroller will not be grandfathered.

Page 2

Hartsfield said he had not talked personally with James Street, President of the Independent Bankers, but in conversations with some of their board of directors, the comments were they did not like statewide branching, but the proposed legislation, as spelled out above, is better than they would get under federally dictated statewide branching.

Ed Penick, Jr.

cc: T. E. Renaud
Affiliate Chairmen
Affiliate CEOs
Bob Connor
John Danforth
Hoyt Wilkinson

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR
ROUTE SLIP

Date _____

From Ca

For Necessary Action
Initial And Forward
Note And Return
Please See Me
As Requested

Remarks:

Did you talk with Bowen after
the strike - did you want
written response?

Same as on Ed Parker note
his
bin

JRTS 00203

3039

March 4, 1992

VIA TELECOPIER
501/453-2400

Mr. Wes Savage
1st Ozark National Bank
P. O. Box 250
Flippin, AR 72634

Re: Whitewater Development Company
Loan No. 5885

Dear Wes:

Please release all documents in your possession relating to the above captioned loan, including a copy of the original note, any renewals, any payments made on the note, and other supporting documents. I hereby authorize you to fax such documents immediately to Loretta Lynch at 501/372-5405.

Thank you for your assistance.

Sincerely yours,

Hillary Rodham Clinton

HRC:mca

RIC-003638

THE
OFFICE OF THE
TREASURER

RECEIVED
JAN 10 1881

TO THE HONORABLE THE SECRETARY OF THE
NAVY
WASHINGTON

DEAR SIR:

I have the honor

to acknowledge

the receipt of

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, MAY 14, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

May I ask the witnesses if they would stand for purposes of taking the oath.

[Witnesses were duly sworn.]

The CHAIRMAN. I ask the witnesses if they have any statement they would like to make at this time.

Ms. Thomases.

SWORN TESTIMONY OF SUSAN P. THOMASES ATTORNEY AT LAW, WILLKIE FARR & GALLAGHER

[No response.]

The CHAIRMAN. Ms. Doyle.

SWORN TESTIMONY OF PATRICIA SOLIS DOYLE SPECIAL ASSISTANT TO THE PRESIDENT & DIRECTOR OF SCHEDULING FOR THE FIRST LADY

[No response.]

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. No.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Thank you for coming down, Ms. Thomases. I'm going to ask you to direct your attention back to 1993. I would like to ask you when was the last time you had a conversation with Vincent Foster before he took his life.

Ms. THOMASES. Either the Wednesday or the Thursday before he took his life.

Mr. CHERTOFF. Tell us where was the conversation?

Ms. THOMASES. It took place at 2020 O Street in Washington.

Mr. CHERTOFF. Is that a hotel at which you often stay?

Ms. THOMASES. It's not a hotel, it's a facility at which I often stay when I'm in Washington.

Mr. CHERTOFF. How did you come to meet Mr. Foster at that facility? Did he ask to meet with you?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Was this in the evening?

Ms. THOMASES. Early in the evening.

Mr. CHERTOFF. How long did you spend with Mr. Foster?

Ms. THOMASES. Not a real long time, maybe 20 minutes, half an hour, maybe a little longer than that. We spent some time at the house.

Mr. CHERTOFF. At the house?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Was this by appointment? You know, he set it up, he arranged it?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It was at his instigation or at his request that you had the meeting?

Ms. THOMASES. Yes.

Mr. CHERTOFF. I don't want to ask you about all the details of the meeting but I understand there was a portion of the discussion that related to certain personal issues that were on Mr. Foster's mind. Is that correct?

Ms. THOMASES. There were a few personal issues.

Mr. CHERTOFF. But there was also discussion of issues on Mr. Foster's mind that concerned the Travel Office, is that correct?

Ms. THOMASES. Yes. It was really about work.

Mr. CHERTOFF. Putting Mr. Foster's personal life out of it, what did Mr. Foster tell you about work?

Ms. THOMASES. He was concerned that there were not enough attorneys to handle the amount of work currently in the Counsel's Office. And he was concerned that if there were, in fact, a Congressional investigation of the Travel Office, that he would really be struggling in order to keep up with it.

Mr. CHERTOFF. Did he tell you he had some concern about David Watkins?

Ms. THOMASES. Not at that particular time.

Mr. CHERTOFF. Did he tell you at some other particular time that he had a concern about David Watkins?

Ms. THOMASES. He told me at a prior time.

Mr. CHERTOFF. How much prior to this meeting on the Wednesday or Thursday before his death?

Ms. THOMASES. I don't know how much prior, but it was not at that meeting. It was prior to that meeting.

Mr. CHERTOFF. Was it a week before, a month before?

Ms. THOMASES. I have no idea. It was at some point.

Mr. CHERTOFF. What did he tell you were his concerns about David Watkins?

Ms. THOMASES. He was concerned, and his real concern was that Hillary would be a target, an unfair target and he thought that Watkins might be the source of the criticism.

Mr. CHERTOFF. When you say a target, a target of criticism?

Ms. THOMASES. Of criticism, an unfair target.

Mr. CHERTOFF. And the source of that might be an unfair accusation by David Watkins?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did he tell you what the nature of the accusation might be?

Ms. THOMASES. No.

Mr. CHERTOFF. So you knew, as of the last day you had spoken with Mr. Foster, that one of the things he had on his mind was a concern that David Watkins might make some kind of allegation that would make Mrs. Clinton, as you described, an unfair target of criticism, is that correct?

Ms. THOMASES. That's correct.

Mr. CHERTOFF. On this particular occasion, which is the last time you saw him when you were at O Street, I guess, it is called the Mansion, is that right?

Ms. THOMASES. The Mansion.

Mr. CHERTOFF. When you were at the Mansion on O Street, he raised with you again the issue of the Travel Office, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. In particular the possibility of there being some kind of investigation in Congress?

Ms. THOMASES. That's what he talked about.

Mr. CHERTOFF. On this occasion, when you talked to him about the possibility of a Congressional investigation, did he talk to you again about Mr. Watkins or somebody being responsible for the First Lady being a target of criticism?

Ms. THOMASES. No. The entire discussion about the Travel Office, when I last saw him, was the resource issue, and the fact that there were not enough people to handle the number of things that would come up. It was essentially a personnel problem, not the substance of it.

Mr. CHERTOFF. You had dealt with Mr. Foster before on the issue of the Travel Office, right?

Ms. THOMASES. No.

Mr. CHERTOFF. Had you ever spoken to anyone in the White House during the period of time that the White House was reviewing the Travel Office situation leading up to the time that the Travel Office people were fired? Did you ever talk to anybody in the White House about the Travel Office personnel and the issues surrounding them?

Ms. THOMASES. Could you repeat the question?

Mr. CHERTOFF. Did you ever talk to someone in the White House about the Travel Office personnel and the issues surrounding their conduct before they were terminated?

Ms. THOMASES. The only person I remember even mentioning it to me was Harry Thomason, at one point.

Mr. CHERTOFF. What did he say to you?

Ms. THOMASES. He just said that he was working on it. I mean, it was not a big conversation.

Mr. CHERTOFF. Harry Thomason, just to put it in context, he is the Hollywood producer who is friends with the Clintons from some previous time, right?

Ms. THOMASES. He was very involved, he had been very involved in the campaign as a producer.

Mr. CHERTOFF. He did not have a White House position in 1993, is that right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. But he told you he was working on the Travel Office issue?

Ms. THOMASES. I may have overstated that. But, yes, he was the only person whoever raised the actual idea of the Travel Office with me.

Mr. CHERTOFF. Did you talk with Mrs. Clinton about the Travel Office?

Ms. THOMASES. Not that I remember.

Mr. CHERTOFF. And did you talk to Mack McLarty about the Travel Office?

Ms. THOMASES. Not that I remember.

Mr. CHERTOFF. I would ask that we put on the Elmo a package, I will show it to you, CGE 9110, which is a copy of a steno pad of notes of a White House person known as Lorraine Voles, that says at the bottom, "S. Thomases went to Mack; Hillary wants these people fired. Mack wouldn't do it. DW didn't want to do it." Did you go to Mr. McLarty and say to him at some time that Mrs. Clinton wanted to have these people fired?

Ms. THOMASES. No, I don't believe I did.

Mr. CHERTOFF. When you say you don't believe that you did, and you say you don't recall, are you prepared to absolutely say with certainty that the account that is contained in these notes by a White House official is incorrect?

Ms. THOMASES. Yes, I am.

Mr. CHERTOFF. So you absolutely dispute this account?

Ms. THOMASES. Well, I don't know. I mean, I don't remember Hillary every telling me to do that, and I never remember having that as a topic of a meeting with Mack.

Senator SARBANES. Could I ask whose pad this is?

Mr. CHERTOFF. This is from Lorraine Voles, V-O-L-E-S, who works at the White House.

Senator SARBANES. Is this part of our document production?

Mr. CHERTOFF. I think it was a production made to the House of Representatives.

Senator SARBANES. In their Travelgate inquiry?

Mr. CHERTOFF. That's correct.

Ms. THOMASES, after this meeting at the Mansion at O Street, you did not see Mr. Foster again, is that correct?

Ms. THOMASES. That's correct.

Mr. CHERTOFF. Now did there come a point in time, sometime thereafter, that you were interviewed by the Federal Bureau of Investigation regarding Mr. Foster's death?

Ms. THOMASES. An FBI agent called me on the phone.

Mr. CHERTOFF. What did he ask you?

Ms. THOMASES. I don't remember specifically.

Mr. CHERTOFF. Did he interview on the telephone?

Ms. THOMASES. It was a rather perfunctory inquiry, yes.

Mr. CHERTOFF. When you say it's perfunctory?

Ms. THOMASES. I did not feel at the time, and I do not feel now that it was an in-depth interview.

Mr. CHERTOFF. Putting aside your speculation about what was in the agent's mind, did the agent tell you he was an FBI agent?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did he tell you he was investigating certain matters relating to Vincent Foster?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You were aware of the fact that he was operating on official Government business?

Ms. THOMASES. I went through a period of wondering. I felt insecure that in fact, since I was not seeing him, that in fact he was an FBI agent, and we spent some time in the beginning of the conversation discussing that.

Mr. CHERTOFF. In other words, you're telling us at the beginning you had a doubt about whether he was really an agent?

Ms. THOMASES. Well, he called me up on the phone and said he was an agent, but I didn't see him, and I raised with him that it would be more comfortable for me if we actually had a conversation in person.

Mr. CHERTOFF. Now, you eventually satisfied yourself that he was an agent, right?

Ms. THOMASES. No. But I treated him as if he were one.

Mr. CHERTOFF. This is pretty important, and I think you and I both understand why it's important. Are you trying to tell us now that when you talked to this FBI agent, and you know as well as I do, there is an FBI report, and this really was an agent. Are you trying to suggest to us that at the time you talked to him, you were under the belief that he might not really be an agent?

Ms. THOMASES. No. What I am saying is, when he first called, I was a little concerned about that.

Mr. CHERTOFF. You, of course, understand that when you talk to an agent on the matter of an official investigation, you have an obligation to tell the truth. Is that correct?

Ms. THOMASES. Absolutely.

Mr. CHERTOFF. I want to read you the last passage of this FBI report. I think you have a copy in the package before you. We will put it up on the screen. It's document OIC 418. It is two pages. But I want to focus your attention on the last paragraph. This is an interview of you.

She last saw Vincent Foster on Wednesday or Thursday before his death. She believes that they had lunch together with some other people in Washington. She recalls him mentioning he planned to take a weekend trip to the Eastern Shore of Maryland. She noted no change in his demeanor or physical appearance but was aware that he was working very hard and was under considerable pressure. His death came as a complete shock to her and she can offer no reason or speculation as to why he may have taken his life.

Did you say these things to the agent?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Why did you tell the agent that you'd had lunch together with other people in Washington on the last occasion you saw him when in truth and in fact, as you have now sworn, you actually saw him by prearrangement at your hotel?

Ms. THOMASES. I think there may have been, I'm sure I probably did tell him that I also had lunch with him. I think there may have

been some confusion because I did have lunch with him in the weeks before he died, but I don't know that I would have told him, and I have told other law enforcement people that where I saw him was at the Mansion on O Street.

Mr. CHERTOFF. This was your first interview by a law enforcement person about this matter, is that correct?

Ms. THOMASES. I think so.

Mr. CHERTOFF. So this is the first time you talked to someone in law enforcement. I want to go over the first two sentences so there is no misapprehension about what you were asked and what you said. "She last saw Vincent Foster on a Wednesday or Thursday before his death." That's correct, isn't it?

Ms. THOMASES. Yes.

Mr. CHERTOFF. "She believes they had lunch together with some other people in Washington." That is incorrect because the last time you saw him on Wednesday or Thursday was at the Mansion at O Street in a prearranged meeting in which the two of you were alone; right?

Ms. THOMASES. I don't know that that sentence fully—I think we talked about a number of things and so that sentence was only part of it.

Mr. CHERTOFF. Is it your testimony that you told the agent about this private meeting at the Mansion on O Street?

Ms. THOMASES. I believe that I told him that we met away from the White House.

Mr. CHERTOFF. And did you tell the agent that the two of you met alone?

Ms. THOMASES. I don't remember specifically whether I said we met alone. I believe I told him he had asked to see me away from the White House.

Mr. CHERTOFF. And you told the agent that this was by prearrangement?

Ms. THOMASES. I don't know whether I used the word prearrangement but I think that I probably used the word that he asked to see me away from the White House.

Mr. CHERTOFF. None of this, of course, appears in the agent's report so your testimony is that you told this to the agent but the agent never made a note of it?

Ms. THOMASES. I don't know. I can't speak for the agent.

Mr. CHERTOFF. Did you tell the agent that you had discussed the Travel Office the last time you had talked with him?

Ms. THOMASES. I don't think he asked what we discussed. He was more concerned about what I thought about the reason that he had killed himself.

Mr. CHERTOFF. Did you tell the agent, were you in fact unable to offer any speculation as to why he may have taken his life?

Ms. THOMASES. Yes. That's correct.

Mr. CHERTOFF. That's what you told the agent?

Ms. THOMASES. Yes. And I still do not feel that I am ready to speculate on why he took his life.

Mr. CHERTOFF. But, in fact, you had had a conversation the week before he passed away where you discussed a number of issues, some of them personal and some of them work-related which could

have borne on what was in his mind at the time that he made the decision to take his life. Isn't that correct?

Ms. THOMASES. I just want to say I saw Vince Foster. I feel tremendous guilt about the fact that I was not wise enough or astute enough to imagine the things that were on his mind would have triggered a decision for him to take his life. There was nothing about his demeanor or about the way he conducted himself that would have made me think that he was going to threaten his life. Had I thought he would have done so, I would have done something, it was my nature. And therefore I'm not willing to speculate even now about why Vince Foster took his life.

Mr. CHERTOFF. Well, let me withdraw the question.

I want to show you a passage from a book which I think you should have in your package. Page 284 of a book written by James Stuart called "Blood Sport." You know James Stuart, I take it?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You talked to him in connection with his writing of the book?

Ms. THOMASES. Yes.

Mr. CHERTOFF. We will bring a copy of the book down. It is page 284, Ms. Thomases.

Ms. THOMASES. Yes.

Mr. CHERTOFF. Mr. Stuart writes:

Earlier, Foster had turned to Thomases to express frustration over the Travel Office report, and, like many in the White House, she had become something of a confidante. Now, she tried to reassure Foster, but he said he needed to talk to her "off the campus," somewhere they wouldn't be seen. Thomases suggested 2020 O Street, a private rooming house where she herself sometimes stayed in Washington.

When Foster arrived that evening, Thomases thought he looked a little better. He looked around the house and seemed amused by its garish Victorian decor. He mentioned that he and Lisa were going to get away for the weekend. But then he began to unburden himself.

He mentioned how overworked he was and how he lacked the time and the support staff he was used to in Little Rock. If he didn't get more help, he said, he was afraid he would "let the President and Hillary down." Predictably, he brought up the Travel Office affair, adding that he didn't trust David Watkins, who he feared might fabricate or embellish the facts to cover himself—possibly at the expense of the First Lady.

Now the portions of this I have read to you, did you, in fact, tell Mr. Stuart that this is what happened in your conversation with Vincent Foster?

Ms. THOMASES. I do not believe that I said that that is what happened with him that night. I think he probably put together different pieces of different conversations. As you know, that is his literary style.

Mr. CHERTOFF. I do not know his literary style because I have never dealt with him, but you have dealt with him because I think you actually approached him to get him interested in writing the book, is that right?

Ms. THOMASES. Not quite.

Mr. CHERTOFF. You clearly had a discussion with Mr. Stuart in which you gave an account of your conversation with Mr. Foster the last time you saw him, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Your testimony now is that his rendition of your account is incorrect?

Ms. THOMASES. Partially incorrect.

Mr. CHERTOFF. Your testimony is that the FBI agent's rendition of your interview with him in June 1994 is also incorrect?

Ms. THOMASES. If you want to talk about the FBI's rendition, I would turn back to the first page of that rendition.

Mr. CHERTOFF. I'd like to talk about first the paragraph that I'm concerned with. Is it your testimony that with respect to the paragraph we have been focused on concerning your last meeting with Vincent Foster, the FBI is incorrect?

Ms. THOMASES. There must be some confusion. I wouldn't say incorrect. There is an omission in it.

Mr. CHERTOFF. A significant omission. Namely, the fact that the last meeting was not a lunch but was a private meeting at Mr. Foster's request where he unburdened himself about a number of matters, including the issue of the Travel Office. That whole element of that last meeting is omitted from the agent's report, right?

Ms. THOMASES. It was not in the report as I received it.

Mr. CHERTOFF. Your testimony was, again just as you said, Mr. Stuart got it wrong in the book, your testimony is that you told the agent about these things but the agent wrote it down wrong, or didn't write it down properly or fully. Is that your testimony?

Ms. THOMASES. It is not fully in there.

Mr. CHERTOFF. So both Mr. Stuart and the agent are incorrect. Now, I would like to move forward a little bit. I would like to move into the week following Mr. Foster's death, and I would like to put up a chart because we have had the benefit now of getting some additional documentation from the White House which I think may enlighten us about the events of that week.

Let me begin by saying this. Obviously, Ms. Thomases, at the time you learned of Mr. Foster's death, you understood that there was significance to your last conversation with him, is that right?

Ms. THOMASES. I don't know that there was serious significance to it.

Mr. CHERTOFF. Isn't it a fact that when you saw the President of the United States for the first time after Mr. Foster's death, you reported to him or you told him in detail about your meeting with Mr. Foster the previous week?

Ms. THOMASES. I don't know that I told him in detail, but I told him about it.

Mr. CHERTOFF. So you thought that it worth telling the President about, is that correct?

Ms. THOMASES. Yes, because I felt so badly that I hadn't noted that he was in such distress.

Mr. CHERTOFF. But putting aside what you felt, I just want to make sure we have the facts correct. The fact is that when you met the President on the 21st, the first time you saw him after Vince Foster's death, you, in fact, told him about your meeting with Mr. Foster at O Street, is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. When you were asked about this at our hearings, I don't think you mentioned that. I want to ask you to direct your attention to the hearing of August 8, 1995, page 76. You were asked about this particular meeting by Mr. Ben-Veniste.

The CHAIRMAN. Hold up for a second.

Senator SARBANES. What page are you on?

Mr. CHERTOFF. Page 76:

Mr. BEN-VENISTE. What was the substance of that conversation?

Ms. THOMASES. It was more reviewing again our sense of helplessness and sadness that we might not have been as sensitive as we might have been to what we then believed was a tremendous amount of pain that Vince must have been in. We talked about that. He was very specific about how he had had a conversation with Vince and had intended to have him at the White House, and we each talked about opportunities in which we could have in fact perhaps, had we known of the problems, done something.

Nowhere in that answer, Ms. Thomases, is there any indication that you had had a meeting with Mr. Foster a week before his death in which he expressed a number of concerns or issues to you.

I want to ask you now to focus your attention on the chart to your right.

Ms. THOMASES. I really can't see it.

The CHAIRMAN. We will put a copy in front of you. I believe you have it. It says, "Activities At The White House, July 26-27, 1993. Is that correct, Mr. Chertoff?

Mr. CHERTOFF. Yes. By the way, Ms. Thomases, before we get to that, I do want to clear up one point. Before you came to testify on August 8th, had you or had you not spoken to the First Lady concerning your upcoming testimony at the hearings?

Ms. THOMASES. I always let the First Lady know if we talked near the hearings, that I am going to hearings, but we don't talk about the substance of the hearings.

Mr. CHERTOFF. I'm going to present you with two frankly inconsistent statements of yours and I want you to see if you can help us understand how it is you came to make these statements. At page 132 of your August 8th testimony, at line 9:

Senator FAIRCLOTH. Did you discuss your appearance here today with Hillary Clinton?

Ms. THOMASES. I did not discuss my appearance here today with Hillary Clinton.

However, more recently, on December 18th, when you returned, if you want to get that testimony at page 46, line 3:

Mr. CHERTOFF. You say at the time approximate to his death. Did you have a conversation with her at any time about the handling of the documents ever?

Ms. THOMASES. I might have in some subsequent times but I do not believe that I ever discussed them with her at that time, or anyone proximate to that time.

Mr. CHERTOFF. What was the discussion that you had with her at some other time about the documents?

Ms. THOMASES. It probably was in the context of these hearings.

Mr. CHERTOFF. You mean that you have discussed it with her since the hearings have begun?

Ms. THOMASES. No. But, you know, just when it was raised that I was coming down.

Mr. CHERTOFF. So you talked to her personally about your coming down to the hearings?

Ms. THOMASES. This was way back when, before the first hearing.

Mr. CHERTOFF. Back in the summer?

Ms. THOMASES. Yes.

Mr. CHERTOFF. What was the discussion?

Ms. THOMASES. Just that I was going to have to come down, and that I didn't think I had very much interesting to tell you, that you were still going to ask me the questions because you felt the need to ask me the questions.

Now which is it, Ms. Thomases. You had a conversation with her concerning coming down, and there weren't going to be a lot of questions in December. Or as you told Senator Faircloth in August, you had no conversation or no discussion about your appearance

before the August 8th testimony, with Hillary Clinton. Which is the correct one?

Ms. THOMASES. It is likely that I talked to her about the fact of my coming down, just as I would say to her, I'm coming down this week, I have a hearing. But I never discussed the substance of what my testimony was going to be or any review of my testimony after my testimony was given. In fact, sir, for awhile, we only really talked to each other through our lawyers.

Mr. CHERTOFF. But in this instance, you testified in December that you probably had a discussion with her about missing documents in the context of these hearings?

Ms. THOMASES. I didn't discuss with her the missing documents.

Mr. CHERTOFF. So the testimony in December is inoperative to the extent it says that?

Ms. THOMASES. To the extent that it suggests that we were talking about the substance of it, yes.

Mr. CHERTOFF. Now let's go to the activities. Bearing in mind that we now know, Ms. Thomases, that you had had a conversation with Mr. Foster in which the Travel Office came up the week before his death—I'm sorry——

Ms. THOMASES. Mr. Chertoff, you're going to have to slow down because I really can't follow you at the speed that you're going. You're jumping from subject to subject and I can't keep track of it.

The CHAIRMAN. I am going to ask Mr. Chertoff to pose it to you again.

Mr. CHERTOFF. I thought of all people, as a New Yorker——

The CHAIRMAN. Now come on.

Mr. CHERTOFF. Ms. Thomases, we have established that you had a conversation with Mr. Foster the week before he took his life, in which he raised the issue of the Travel Office and his concern about the possibility of a Congressional investigation. And, you also knew, as of the time of his death, that he was concerned that Mr. Watkins might make allegations that directly involved the First Lady.

You get a call from Mr. Nussbaum on July 26th, which is the Monday after Mr. Foster's death, and in that telephone call, he tells you, for the first time, that there's a note or a piece of paper torn up that's been found in Mr. Foster's briefcase. He indicates to you the substance of that note which includes references to the Travel Office problem. You do recall that conversation, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Bearing all that we've now been able to establish in mind, you called Patricia Solis, now Patricia Doyle, congratulations, you called her at 5:24 on the 26th of July, right?

Ms. THOMASES. I don't specifically remember.

Mr. CHERTOFF. The records reflect that. Do you have reason to dispute the records?

Ms. THOMASES. No.

The CHAIRMAN. You have the record in front of you?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Isn't it a fact, Ms. Thomases, that particularly in view of the fact of your having had discussions with Mr. Foster about his concerns about the Travel Office, in view of what his concerns were about the First Lady, and in view of having heard from

Mr. Nussbaum about the fact that the paper found in his briefcase made reference to the Travel Office, didn't you call in order to set up an appointment or to see if you could reach the First Lady and have a conversation with her about it?

Ms. THOMASES. I don't know why I called.

Mr. CHERTOFF. Ms. Solis, do you remember this telephone call? Do you have any idea why there was a call from Ms. Thomases the week after Mr. Foster had taken his life?

Ms. DOYLE. I don't remember the call.

Mr. CHERTOFF. Now the next thing we have established, and I am not going to go through the recitation here, there's an increasing list of messages and calls back and forth on Tuesday, which we have established earlier is not your regular day for going down to Washington, which indicate on at least two occasions there were messages left for you to reach out for Mrs. Clinton, and that, in fact, you arrived at the White House at shortly before 3:00 o'clock in the afternoon.

With the benefit of the additional information we now have that you have heard about, do you now remember going to the White House to have the first face-to-face conversation you had with Mrs. Clinton since Mr. Foster's death?

Ms. THOMASES. No, I still don't remember.

Mr. CHERTOFF. I'm going to go over these in a second—but would you agree with me that particularly since you had had a conversation with Mr. Foster a week before he passed away, that that might be something that would be of interest to the First Lady in terms of determining what was in Mr. Foster's mind, or what was his state of mind before he took his life?

Ms. THOMASES. I probably mentioned that conversation to Hillary when I spoke to her, when she called me the night that she called me to inform me of his death.

Mr. CHERTOFF. You've never told us about that previously. You're now telling us that you remember the first time she called you, you mentioned this meeting?

Ms. THOMASES. I did not say I remembered it. I said it is likely that I mentioned it to her. I don't specifically remember mentioning it to her.

Mr. CHERTOFF. Let's go over this pattern. You got a message in the morning from Ms. Solis saying, "HRC wants to see you today."

Ms. Doyle, can I ask you how common was it for the First Lady to request Ms. Thomases to come down from New York for the day?

Ms. DOYLE. I'm sorry, to come down specifically?

Mr. CHERTOFF. To call up on a particular morning and say, come down, I need to see you today?

Ms. DOYLE. That's not normally the way it works. If Mrs. Clinton wanted to see Susan, she would ask if she in town, do you know what her schedule is, can she come by.

Mr. CHERTOFF. Now, you actually were up there in the afternoon for several hours. In fact, we now know, in addition to the hour and a half we had previously accounted for your being in the residence, you were back in the residence, according to our chart, at 5:30 p.m. on the 27th because you made two calls from the residence on your credit card.

An hour later, Webster Hubbell arrived at the residence. Did you see Mr. Hubbell in the residence when you were up there with the First Lady on Tuesday, July 27th?

Ms. THOMASES. As I have said to you previously, I really remember nothing very specific about the 24th-27th.

Mr. CHERTOFF. Do you remember Mr. Hubbell being up there generally?

Ms. THOMASES. I remember seeing Webb Hubbell at some point with Hillary after Vince's death, but I don't remember whether it was specifically that day.

Mr. CHERTOFF. Was it in the residence?

Ms. THOMASES. I don't know for sure.

Mr. CHERTOFF. Can you offer us a reason why—and to put it in context because some of this obviously relates, I mean, this was the Tuesday that the note was shown for the first time to the Attorney General of the United States who saw it actually after Mr. Hubbell had come to the residence.

It was also the day in which the documents were removed from Mr. Foster's office, were turned over to Williams & Connolly, and what is of interest is that of the universe of people that we know that had either physically seen the billing records or, in your case, had heard about the content of the billing records because we know from your notes, that you had talked to Webb Hubbell about the billing records, there was only three people, four possibly including the First Lady.

Mr. Foster, who was dead as of the 27th. Yourself, Mr. Hubbell, and Mrs. Clinton, and the three of you happened to be in the same place at the same time in the White House residence on the very day that the documents were removed from Mr. Foster's office, were finally turned over to Williams & Connolly after sitting in the residence for several days. And the very same day that the decision is made to show the Attorney General of the United States, Mr. Foster's torn-up note or writing.

With all of that in mind to help you refresh your recollection, Ms. Thomases, can you tell us what you remember about this meeting you had with Mr. Hubbell or this occasion you had where you were with Mr. Hubbell and Mrs. Clinton after Mr. Foster's death?

Ms. THOMASES. Can I just talk to my attorney for a minute?

Mr. CHERTOFF. Sure.

Ms. THOMASES. I still don't remember the 27th, but I do remember at some point meeting with, being in the presence of Webb and the First Lady after Vince Foster's death. I don't know that it was on the 27th.

Mr. CHERTOFF. What happened?

Ms. THOMASES. We just talked about the tragedy of Vince's death and we talked about how sad it was, and I remember the first time that the three of us were together, we talked a little bit about some of the good times that we had had together in old times before Bill Clinton was elected President, and in the days in which I used to see them.

Mr. CHERTOFF. Ms. Thomases, since the independent record establishes that this occurred on the 27th, because we have it from the records, how is it that you didn't discuss the note, the torn-up pieces of paper with Mr. Hubbell in this meeting?

Ms. THOMASES. I've testified it before, and I reiterate it again, I do not remember having that discussion. I know I wouldn't have brought up the subject of the note. I have no recollection of anybody else bringing up the subject of the torn-up note. And I just don't remember it.

The CHAIRMAN. We'll come back to that.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Ms. Thomases, Ms. Doyle.

Ms. THOMASES. Nice to see you.

Mr. BEN-VENISTE. On this issue of Mr. Hubbell's visit to the White House on the 27th, the records indicate that Mr. Hubbell arrived at a point after which the files that had been segregated and taken over to Williams & Connolly had already left the White House residence.

According to the records, just to put this in the proper context, Mr. Barnett left the residence at 4:30 p.m., according to Secret Service records, and Mr. Barlow, the Williams & Connolly courier, left at 4:42 p.m. with the records. Actually, he was an administrator at the firm, so I don't want to denigrate his position there. But the records also indicate that Mr. Hubbell did not arrive until some 2 hours after that happened.

It is true there were a number of subjects covered in this 35-minute period of questioning. I want to start, I guess, with the reason for your travel to Washington on the 27th. Mr. Chertoff has suggested that the reason you traveled to Washington was because you got a message that Mrs. Clinton wanted you to travel to Washington on that day. Did that happen, to your recollection?

Ms. THOMASES. I really don't know why I traveled to Washington on that day. But as I stated, I could have come for any number of reasons. I knew I couldn't come to Washington that Wednesday because I had an important meeting in New York that day and I think I've so testified previously on that.

Mr. BEN-VENISTE. Yes. Your prior testimony was that you had a meeting with a new client or a prospective client in New York, and that your regular travel to Washington was delayed by a day. Is that correct?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. So all of this supposed hocus pocus about when you came down doesn't seem to make much sense since, if you were to be involved in things that were happening, one would expect that you would come earlier rather than later. Would that be fair to say?

Ms. THOMASES. Yes.

Mr. CHERTOFF. In connection with the suggestion that the message Ms. Doyle left for you was that you should come down to Washington today, that isn't what the actual note says that we have been provided. That note says, I believe—I don't have it in front of me, perhaps you do—that Mrs. Clinton would like to see you today. Is that what that note was?

Ms. THOMASES. That's what the note says.

Mr. BEN-VENISTE. So there wasn't anything in that message or note about Mrs. Clinton wanting you to travel to Washington, but rather she would like to see you. Presumably at that point, since

the message I believe was left at your Washington office, Ms. Doyle or the First Lady was aware that you were in Washington. Ms. Doyle, does that comport with your recollection of leaving the note that there was not a specific request to travel to Washington?

Ms. DOYLE. I don't remember the call at all.

Mr. BEN-VENISTE. So the best evidence of that would be the phone message involved?

Ms. DOYLE. That's right.

Mr. BEN-VENISTE. Now on the issue of Mr. Foster's concerns prior to his death, the things that were on his mind, I don't think we ought to take this as though we are dealing in a vacuum with new information.

You may be reminded that in the testimony given by Mr. Watkins, 10 months ago in a hearing before this Committee, and I can supply the page to you, Mr. Chairman that would be at page 66, on July 25, 1995, that in the very car ride that he took with the U.S. Park Police on their way to inform Mrs. Foster of her husband's apparent suicide, that Mr. Watkins, at that point, mentioned, and it was the only thing that he mentioned, that Mr. Foster was concerned about the Travel Office. "I told them about the Travel Office, and he said that he had been upset about the Travel Office." Those were Mr. Watkins' words in his testimony before this Committee. And of course, shortly thereafter, the note was discovered left torn up in Mr. Foster's briefcase.

Let me read the portions of that note so that if there is some mystery about what was on Mr. Foster's mind, that was very apparently resolved shortly after his death, at least insofar as in his own hand, he expressed his concerns, and he said:

No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the Travel Office. There was no intent to benefit any individual or specific group. The FBI lied in their report to the Attorney General. The press is covering up the illegal benefits they received from the Travel Office. The GOP has lied and misrepresented its knowledge and role, and covered up a prior investigation, also apparently relating to the Travel Office.

So all of this was well in hand within a short number of days after Mr. Foster's death.

Now, you have been asked whether you felt it appropriate to speculate when asked that question by an FBI agent, shortly after Mr. Foster's death. Actually, that report is dated June 14, 1994, nearly a year after Mr. Foster's death. Is that correct?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. So this isn't something that was being done in the heat of an investigation immediately following Mr. Foster's death. Clearly, the FBI and everyone else knew, well in advance of that point, as a matter of fact, that Mr. Foster had expressed concerns about the Travel Office.

Incidentally, the concerns are not limited to anything internally about the Travel Office inquiry in Mr. Foster's note, but rather a number of things were listed that seemed to indicate his feeling that the White House was being treated unfairly in connection with the Travel Office matter. The GOP, the press, the FBI, et cetera, were conducting themselves in a way that he felt, at least according to his note, was disingenuous.

Putting all that in context, I take it that it was your view, in your interview by telephone, by an FBI Special Agent in New York

that you did not wish to speculate as to the cause of Mr. Foster's suicide?

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. Now the note, which was produced and read to you, was one which this Committee had not requested and had apparently not received in any official capacity, but rather was a document that was released in some manner in association with the House investigation into the Travel Office matter. That note, we are told by Mr. Chertoff, was apparently written by Lorraine Voles and produced by the White House to the House of Representatives. We, to my knowledge, have not questioned Ms. Voles. Is that correct, Mr. Chertoff?

The CHAIRMAN. The record speaks for itself.

Mr. BEN-VENISTE. The record is quiet here.

The CHAIRMAN. Mr. Ben-Veniste, I've allowed you some latitude here. We know this was an official public record. It was introduced, it is in the public domain. There's no mystery about this note.

Mr. BEN-VENISTE. My only inquiry was I did not remember having Ms. Voles deposed by our Committee. I was simply trying to verify that. And we don't know anything about how this note was taken. It is undated, and I have to tell you I don't know anything more about it. The Travel Office is not the subject of our mandate according to Senate Resolution 120.

Let me go to the issue of the chronology of events from July 26th and 27th. Now there are, in fact, a number of markers and pieces of documentary evidence relating to the comings and goings of individuals on that date with respect to messages left for you, and with respect to your own telephone activity in the sense that there were a couple of calls that you apparently made on a telephone calling card from the White House on the afternoon of the 27th. Have you reviewed those?

Ms. THOMASES. OK.

Mr. BEN-VENISTE. Have you had an opportunity to look at a calling card record which has been marked ST0000128?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. That reflects that on the 27th, at 5:27 and 5:29 p.m., two calls were placed, apparently by you, to numbers in New York City. They were placed from the White House residence. Do you see that?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. Thereafter, it appears that a third call was placed, also on your calling card number, at I think it's 8:44 p.m. It appears to be from Washington National Airport to Connecticut?

Ms. THOMASES. Yes, I see that.

Mr. BEN-VENISTE. You also note that there are records that apparently reflect that Ms. Doyle and Evelyn Lieberman left messages for you on the 27th indicating that Mrs. Clinton would like to see you that day.

Ms. THOMASES. I see the message from Evelyn.

Mr. BEN-VENISTE. That's at 1:30 p.m.

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. That is dated. Apparently it is from a message log kept for you at your Washington law firm office that reflects

that Ms. Solis, now Ms. Doyle, left you a message that morning to the same effect?

Ms. THOMASES. I think this is the log of my New York office. That is the kind of log I keep in my New York office, but yes, it is the same day.

Mr. BEN-VENISTE. Now the records kept at the White House indicate that you were present at the residence at some point, at least during the afternoon of the 27th, and it appears that you were there for several hours. You've reviewed those records?

Ms. THOMASES. Yes. But as I have said before, in spite of the fact that I have tried very hard to remember anything about it, I don't remember actually being there. But the facts reflect the fact that I was probably there.

Mr. BEN-VENISTE. The fact that there are calling card records reflecting calls records made by you apparently from the White House residence lends further documentary corroboration to the Secret Service records and all the rest that you were there that afternoon. My point is that we've now accumulated I think everything that might bear on your comings and goings that day. And the issue and the question that I want to put to you is, now that we have all of this information collected and you've had a chance to look at it, does any of it refresh your recollection about the events of that day insofar as your visit to the White House residence?

Ms. THOMASES. Unfortunately, I have no real recollection of what I did that day. I'm sorry.

Mr. BEN-VENISTE. Mr. Chairman, we will cede back our time.

The CHAIRMAN. We'll take a break. We'll recess for 10 minutes. [Recess.]

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

I would simply like to note that with respect to what is marked CGE9110, which is the handwritten note that was attributed again to Lorraine Voles at the White House, apparently a person who works in the Communications Office, and perhaps we can follow-up on this, Mr. Chairman.

This is an undated note and it doesn't indicate from whom the information was received. And I see that the way your name is apparently spelled incorrectly, it says S. Thomas, but someone from the press during the break mentioned that when Ms. Voles testified before the House, and I have no independent knowledge about this, she indicated that this note was an inquiry from the press, rather than the report of any individual.

So the notion of it being shown to you as though someone on the inside provided information to another official, then wrote it down on a steno pad, if in fact this reporter was correct in summarizing Ms. Voles' testimony, that is an astounding jump of olympic proportions in terms of a conclusion to be drawn.

I think, Mr. Chairman, we ought to review Ms. Voles' testimony before the House and then try to put this back on the record with some level of precision. That is all I would like to say about that at this time. Obviously, I did not know that Ms. Voles' testimony would come up here today, and I have not reviewed it.

Ms. THOMASES. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Ms. Thomases, I just want to focus on this issue of this meeting you had with Mr. Hubbell and Mrs. Clinton up in the residence. I understand you can't tell us the particular day that it happened, but we do agree at this point that you had a meeting with Mrs. Clinton and Mr. Hubbell in which you discussed the circumstances and various events surrounding Mr. Foster's death, is that right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It's fair to say it was the first time the three of you had been together since the death, which would have been the occasion to talk about it, right?

Ms. THOMASES. It's the first time that I had been with the two of them.

Mr. CHERTOFF. Bearing those two facts in mind, and using the records of all the travel back and forth that we have, all the phone calls, all the ins and outs at the White House that we've developed for many months, I think we can say conclusively that this meeting had to occur on the 27th because there was no other occasion before the 27th, based on the records that we have, that you and Mr. Hubbell and Mrs. Clinton were together at the same place in the residence. So with the assistance of the records, we can now demonstrate, or we can now be confident that, in fact, you were present together with Mr. Hubbell and Mrs. Clinton on the 27th.

That raises the following question in my mind. On the 26th, you learned, for the first time, about what we can describe as the note, the Foster note, and from what we have in prior testimony, that appears to be the point at which Mrs. Clinton was shown the Foster note on the 26th.

On the 27th, therefore, there's almost kind of a compelling logic that you would have discussed with Mr. Hubbell in the context of reminiscing and ruminating about Mr. Foster, you would have discussed the one piece of information that had been discovered in the preceding week that shed some light, however dim, on what was going on in Mr. Foster's mind when he took his life. Would you agree with me, therefore, Ms. Thomases, that, in fact, in this meeting or discussion you had with Mrs. Clinton and Mr. Hubbell, that the subject of the note almost necessarily came up?

Ms. THOMASES. No.

Mr. CHERTOFF. So you clearly knew on the 27th about the note, is that right?

Ms. THOMASES. I have to tell you that I don't remember. I have some memories of my first meeting with Webb and Hillary. Although, as I said to you, I don't remember it as being on the 27th. But I do know, at least in my memory, that I never brought up the idea of the note with Hillary. Hillary never brought up the idea of the note with me, and I don't remember Webb bringing up the idea of the note. I mean, your conclusion that this was inevitable is your conclusion, and I don't think it had anything to do with the three of us.

Mr. CHERTOFF. Let's just establish the things we do know. We know that on Monday the 26th, you knew about the note, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. We know this from other evidence, that Mrs. Clinton knew about the note on the 26th. We know that you just

testified a moment ago that the meeting or the discussion you recall having had with Mrs. Clinton and with Mr. Hubbell where you talked about Mr. Foster was the first time you had come together since Mr. Foster's death, because you just told us that. And we know from looking at the records that the earliest that could have been was on the 27th because you all weren't together before the 27th in that period after Mr. Foster's death.

So by the simple operation of logic, almost like mathematics, this meeting that you remember had to be on the 27th. You said it was the first meeting. You had this discussion about Mr. Foster the first time the three of you got together after Mr. Foster's death. We know that first time is the 27th. We know that as of the 27th, you knew about the note. We know that as of the 27th, Mrs. Clinton knew about the note. And you'll agree with me that Mr. Hubbell had a close relationship with Mr. Foster, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. He was certainly concerned and wanted to know what might have been on Mr. Foster's mind that led to this, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Yet with all of this, with both you and Mrs. Clinton aware that a note had been discovered and meeting for the first time with Mr. Hubbell on the 27th, your testimony is that you don't think that either you or Mrs. Clinton brought the issue of the note up to tell Webb, you know, hey, we found a note. What do you think was on Vince's mind? That didn't happen?

Ms. THOMASES. I don't believe it would have.

Mr. CHERTOFF. You were not trying to keep it from Mr. Hubbell, were you?

Ms. THOMASES. I wouldn't have brought it up, and I don't think Mrs. Clinton brought it up.

Mr. CHERTOFF. Was there some reason that you would have avoided bringing up the note?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Was there some secrecy about this at the time?

Ms. THOMASES. No. I think that you have made a big deal of this writing and I don't know, because I have not discussed this, but I have never thought that this writing had the significance that you are vesting it with.

Mr. CHERTOFF. With all due respect, Ms. Thomases, I think a lot of the country made a big deal out of this writing.

Ms. THOMASES. Mr. Chertoff, I wouldn't have brought up the note if Mrs. Clinton hadn't brought it up, because I would not have wanted to upset her in that way. Therefore, I didn't talk to her about any writing for months, if at all, that I had heard about it from Bernie.

Mr. CHERTOFF. You're telling us you never spoke to Mrs. Clinton about the writing?

Ms. THOMASES. I've told you before, I didn't say never. But I said proximate to its discovery, I don't remember talking to her about it. I think I've so testified.

Mr. CHERTOFF. While we are on the subject of conversations with Mrs. Clinton, I want to go back now to this occasion before your first appearance in August where you say there may have been at least some contact with Mrs. Clinton indicating that you were

going to come down to testify. Was this a telephone contact? Did you call Mrs. Clinton and say you were coming down to testify?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Did you have a meeting with her before you came to testify on August 8, 1995?

Ms. THOMASES. I don't think I saw her, so it probably would have been on the telephone.

Mr. CHERTOFF. Did you make an appointment to stop by and see her at the White House after your testimony?

Ms. THOMASES. No.

Mr. CHERTOFF. I want to show you S20561, and we are going to make sure you have a copy of it. It's a visitors' summary for 8/95. The date on this particular run is August 9, 1995. That would be the day after you testified. We're getting it down to you.

This indicates, at the very least, that an appointment had been made for you to visit the White House at, I guess it would be, 3:00 o'clock in the afternoon on August 9th, and it is to a visitee named Curry. Who is Curry?

Ms. THOMASES. He is a person who works in the White House.

Mr. CHERTOFF. In what capacity?

Ms. THOMASES. I don't know his exact capacity.

Mr. CHERTOFF. Is he someone that works for the First Lady?

Ms. THOMASES. No.

Mr. CHERTOFF. Do you know why you would have been at the White House on this particular day?

Ms. THOMASES. I don't believe I was at the White House. There was a Wednesday afternoon meeting that I sometimes would come to that was on Wednesday. I don't believe I was there on this day.

Mr. CHERTOFF. In the period before you came to testify for the first time here in August, did you become aware of the fact that billing records had been discovered or had been seen in the Book Room of the White House?

Ms. THOMASES. Excuse me, could you repeat that?

Mr. CHERTOFF. In the period before you came to testify on the 8th of August, did you become aware of the fact that billing records had been observed by Helen Dickey in the Book Room of the White House?

Ms. THOMASES. No.

Mr. CHERTOFF. I'm sorry, Carolyn Huber. Did you become aware that Carolyn Huber had observed billing records in the Book Room of the White House?

Ms. THOMASES. No.

Mr. CHERTOFF. Ms. Solis, do you know who Mr. Curry is?

Ms. DOYLE. I think you're referring to Bill Curry.

Mr. CHERTOFF. Who is Bill Curry?

Ms. DOYLE. I don't know his exact title but he works I think in domestic policy. I don't know.

OPENING COMMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. I think there may be, if I can say, Mr. Chairman, if it's Bill Curry, he was a candidate for Governor in Connecticut. He's a former State Senator and lost in the last election and was brought down as a domestic advisor, if that's the same Curry.

The CHAIRMAN. Domestic advisor at the White House?

Senator DODD. I think that's generally the title, but don't hold me to that.

Mr. CHERTOFF. Ms. Thomases, before the beginning of this year 1996, when they became publicly visible did you ever see the billing records? I can show them to you if you need to know what we are talking about, which have now been publicly unveiled.

Ms. THOMASES. No. And I testified on December 18th, five times, that I had not seen them.

Mr. CHERTOFF. Had you ever heard anything about the handling of those billing records up until January 1996?

Ms. THOMASES. No.

Mr. CHERTOFF. Never discussed the issue with anybody?

Ms. THOMASES. No.

Mr. CHERTOFF. Did you ever discuss it with Mr. Hubbell?

Ms. THOMASES. No. I mean, except to the extent that we talked about it back in the campaign, which you also reviewed in my testimony on December 18th.

Mr. CHERTOFF. That was during the testimony in which we repeatedly raised the issue and asked about the whereabouts of the billing records. Let me ask you this, Ms. Thomases. After your testimony on the 18th of December of last year where the issue of the billing records kept coming up, did you have any discussion with anybody besides your attorneys concerning where those billing records might be?

Ms. THOMASES. No. But I was shown them by the Independent Prosecutor.

Mr. CHERTOFF. That would have been sometime in 1996 though?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

I have several questions, but just as a first question, maybe it doesn't have to do with anything, Ms. Thomases, but did you call Mrs. Foster after his death and talk to her with condolences?

Ms. THOMASES. No, I wrote her a letter.

Senator FAIRCLOTH. How long after his death before you wrote the letter?

Ms. THOMASES. I don't know exactly which day.

Senator FAIRCLOTH. But you didn't call her?

Ms. THOMASES. No.

Senator FAIRCLOTH. Why not?

Senator DODD. Mr. Chairman.

Senator FAIRCLOTH. I asked a question. Why not? There was a plethora of calls going every which way to everybody else. Everybody says they were condolences. I would have thought one would have dropped in the bucket for Mrs. Foster.

Ms. THOMASES. I thought that the letter was the best way for me to communicate with her.

Senator FAIRCLOTH. That's good enough.

Did you ever visit with the First Lady in the residence or on the third floor of the White House last summer, before your appearance before this Committee?

Ms. THOMASES. I don't believe so.

Senator FAIRCLOTH. You don't believe so?

Ms. THOMASES. No. I don't think I was here in that time period. I don't know because I don't have the records.

Senator FAIRCLOTH. Ms. Thomases, if you don't know, who could we ask that might know? Did you ever discuss the First Lady's legal billings prior to these hearings last summer with the First Lady, Bruce Lindsey, or anyone else?

Ms. THOMASES. Excuse me. Could you repeat that?

Senator FAIRCLOTH. Yes. Did you ever discuss Mrs. Clinton's legal billings prior to these hearings last summer with the First Lady, Bruce Lindsey, or anyone else?

Ms. THOMASES. No. Excuse me. Except during the campaign of 1992 in terms of a timeframe.

Senator FAIRCLOTH. You didn't discuss them immediately prior to your appearance here?

Ms. THOMASES. No.

Senator FAIRCLOTH. Ms. Thomases, would Vince Foster be communicating with you about the Travel Office problems because he wasn't talking to the First Lady about Travel Office problems?

Ms. THOMASES. No. The conversation that I had with Vince Foster focused predominantly on personnel issues, staffing issues, and his need for more staffing.

Senator FAIRCLOTH. Why didn't you tell the FBI about your conversation with Foster?

Ms. THOMASES. I don't know. He asked me to speculate on what was the reason for his death. He didn't ask me about the general conversations that I had with him.

Senator FAIRCLOTH. You stated earlier that you and Mrs. Clinton communicated through your lawyers. When did this start?

Ms. THOMASES. I don't know. It was just after, not during the period after my first appearance, it was during the fall.

Senator FAIRCLOTH. That you only communicated with Mrs. Clinton through lawyers now?

Ms. THOMASES. It became a little bit of a joke.

Senator FAIRCLOTH. We aren't joking here, so would you tell me what was the joke? I missed it.

Ms. THOMASES. I didn't want to call her and potentially embarrass her, so I told her lawyer that I was thinking of her, and that if she wanted to talk to me, she could call me.

Senator FAIRCLOTH. Through her lawyer. Do you talk to her through her lawyer now, or do you talk to her directly? Or is the joke over, or still going?

Ms. THOMASES. I talk to her directly.

Senator FAIRCLOTH. The joke's over.

Ms. THOMASES. But we still don't talk about the substance of these hearings.

The CHAIRMAN. Senator Sarbanes has agreed to let you continue your line of questioning. In order that we don't go over too much on one side or the other, and we've been moving pretty well, why don't we go to Senator Sarbanes.

Senator SARBANES. Fair enough.

The CHAIRMAN. Then we will come back to Senator Faircloth.

Mr. BEN-VENISTE. Ms. Thomases, I guess it's somewhat disconcerting if every time you have a conversation with Mrs. Clinton, it becomes the subject of inquiry by the U.S. Senate, the House of Representatives, the staff of both of those bodies, the Independent Counsel, and whoever else has the authority to call you up and question you. Is that the joke that you're talking about?

Ms. THOMASES. That's exactly the joke that I'm talking about.

Mr. BEN-VENISTE. In a sense, it's not very funny but the reality is everytime you have a conversation with someone who is somehow involved or remotely involved in these proceedings, that conversation will then become the object of a question for which you are obliged to have a precise recall and testify under oath. That's basically life in Washington as of May 1996?

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. With respect to the appointment that was reflected in document S020561, which you were asked about, according to the White House Directory, William E. Curry, Jr., in 1995, was a Counselor of Domestic Policy and Political Affairs, and, of course, Senator Dodd has further identified him on the basis of his personal acquaintance. You indicated, I believe, that from time to time, you would attend a regular meeting with Mr. Curry's group back in 1995. Is that correct?

Ms. THOMASES. That's correct.

Mr. BEN-VENISTE. So that it would not be unusual for there to be a White House visitor's summary produced whereby, if you were possibly expected to attend the meeting, you would be cleared through?

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. That appears to be what this record indicates. However, what is important to note is that according to the record, you did not appear or attend that meeting?

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. Moreover, this meeting was not scheduled to be in the White House or in the residence, but rather in the Old Executive Office Building where Mr. Curry made his office both according to document S020561 as well as the White House Directory for that period of time. Is that correct?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. Again, we have a coincidence of a record reflecting your authorization to attend a meeting that had absolutely nothing to do with any of these issues?

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. Which you did not attend?

Ms. THOMASES. Which I did not attend.

Mr. BEN-VENISTE. And which was not in a building where the activities we are focusing on occurred?

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. In order to move this further along, I think we would be prepared to cede back our time.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I would like to ask that the chart be put up again for the events of July 27th. Ms. Thomases, you might want to get your copy out. Your testimony is that in the last meeting with Mr.

Foster before he took his life, that Mr. Foster discussed the Travel Office matter but in the context of asking for additional resources?

Ms. THOMASES. Yes.

Mr. CHERTOFF. But, of course, the person who had the authority to get more resources was Bernie Nussbaum, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You weren't the person who had the control over resources?

Ms. THOMASES. I think he wanted my support in that matter.

Mr. CHERTOFF. In other words, is it your testimony that he was not himself able to persuade Bernie Nussbaum—to get Bernie Nussbaum into the White House Counsel's Office. Did he need to go to you to persuade Bernie Nussbaum?

Ms. THOMASES. It is not what he might have felt, it is not that he needed me, it is that he wanted to get some sense of urgency instilled in this issue. This is what I am inferring. I don't know it for a certainty.

Mr. CHERTOFF. OK, so now that's useful, because now we understand that in this last conversation, what Mr. Foster was conveying to you, as you understood, is that he felt a sense of urgency concerning these investigations or this possible investigation to the Travel Office matter?

Ms. THOMASES. No, the sense of urgency was his need for more persons.

Mr. CHERTOFF. That was a sense of urgency that was prompted by this impending investigation; right?

Ms. THOMASES. Perhaps.

Mr. CHERTOFF. Was he talking, by the way, about bringing in outside criminal defense lawyers to supplement or as opposed to just adding more personnel to the White House Counsel's Office?

Ms. THOMASES. He inquired as to whether or not outside lawyers could be used to supplement White House staff.

Mr. CHERTOFF. Was it your understanding that he was talking specifically about outside lawyers with expertise in doing criminal defense work?

Ms. THOMASES. That's not—I don't remember that as a specific focus.

Mr. CHERTOFF. Now as of this point in time, as of this last meeting, you know from your conversations with Vincent Foster that he is concerned about an investigation, he wants your assistance or your support in terms of bringing outside lawyers in; and, in particular, you know from earlier conversations that he is concerned the First Lady might be pulled into this through accusations that David Watkins might make.

Keeping that in mind, I would like to move to another subject. As of this time as well, Ms. Thomases, I take it that you also knew that Mr. Foster was involved in dealing with Whitewater-related matters while he was in the White House Counsel's Office?

Ms. THOMASES. Excuse me? Could you repeat that, please?

Mr. CHERTOFF. You also understood that while Mr. Foster was working in the White House Counsel's Office that he was involved in Whitewater-related activities; right?

Ms. THOMASES. I don't know. He hadn't talked to me about it in the period immediately before his death.

Mr. CHERTOFF. Take out the word "immediately," he had spoken to you since he had come to the White House concerning the work that he was doing on the Whitewater tax materials?

Ms. THOMASES. Yes.

Mr. CHERTOFF. He complained to you that the materials were disorganized and he was having problems dealing with the issue?

Ms. THOMASES. Yes, I gave that testimony.

Mr. CHERTOFF. You understood he was working on that issue in the White House Counsel's Office?

Ms. THOMASES. Yes.

Mr. CHERTOFF. So that as of the point——

Ms. THOMASES. In the context of the Clintons' tax returns.

Mr. CHERTOFF. Didn't he also tell you that he was working on corporate tax returns for Whitewater?

Ms. THOMASES. No.

Mr. CHERTOFF. At any rate, you understood therefore that——

Ms. THOMASES. At least I didn't understand that to be.

Mr. CHERTOFF. In terms of what you understood, you understood that he was working on Whitewater-related issues and Travel Office-related issues in his capacity as Deputy White House Counsel; is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You understood from that that there were likely to be materials in his office that related to Whitewater?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You understood there were likely to be materials in his office related to the Travel Office affair?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Had you ever seen or were you aware that he actually had a notebook that he kept a handwritten kind of account of what was going on with the Travel Office matter?

Ms. THOMASES. No.

Mr. CHERTOFF. Now bearing all this in mind, I want to focus on the 27th. This is the first day that you have, putting aside your memory, according to the record, this is the first occasion you have a face-to-face encounter with the First Lady since the death. I would like to go through the sequence of this and see if you can help us understand how this comes about.

Let's begin in the morning on Tuesday. First, all that day the First Lady stayed in the residence and that is made clear by the Secret Service logs. In fact, it appears that from the records that the Committee has that although the First Lady had some appointments in her office, in I guess the West Wing portion of the White House, she actually didn't keep those appointments and she stayed in the residence.

The morning began with a message that Ms. Solis left in your New York office saying, "HRC wants to see you today." That's right, isn't it?

Ms. THOMASES. Yes, you have shown me the message.

Mr. CHERTOFF. You don't remember whether you stopped into your New York office that morning or not; correct?

Ms. THOMASES. No.

Mr. CHERTOFF. You did get the message because at some point you responded to Ms. Solis' office by placing a call there; correct?

Ms. THOMASES. I don't know whether it was in response, but the record shows that I placed a call.

Mr. CHERTOFF. Then there is a sequence in the next hour or hour and a half of a number of telephone calls to the White House, a 3-minute call to the operator, a 20-second call to the operator, almost 10 minutes to Mack McLarty and again 2 minutes to Mr. McLarty's office. As you sit here now, do you remember more about these calls with Mr. McLarty's office?

Ms. THOMASES. No.

Mr. CHERTOFF. Now again, I want to go back to this note from Lorraine Voles. I am informed that there is not any testimony by Lorraine Voles in the House Committee that would in any way characterize this note as being a press inquiry or not. But in any case, your testimony still is that you never had conversations with Mr. McLarty about the Travel Office back in the spring of 1993; is that right?

Ms. THOMASES. Correct.

Mr. CHERTOFF. Let's continue along on the 27th. We now see that you get another message from Mrs. Clinton, this time directed to your Washington office, "Please call Hillary." Did you get that message?

Ms. THOMASES. I don't know whether I got that message.

Mr. CHERTOFF. Do you know how it is that Mrs. Clinton became aware of the fact that you were not in New York where the call was placed at the beginning of the day, but that you were in Washington?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Ms. Solis, let me ask you. I understand you don't remember the calls. Is there anything about the sequence that helps you? Your first call is a message left in the New York office saying, "HRC wants to see you today." Then sometime thereafter, in the early afternoon, you leave a message in the Washington office. Do you know how you came to understand that you should place the next call to the Washington office?

Ms. DOYLE. First of all, I didn't place the call to the Washington office. I think Evelyn Lieberman did.

Mr. CHERTOFF. Do you know how it is that she came to know that there was a—

Ms. DOYLE. Not really, but I can say that every time I called Susan, I automatically call the New York office because I know the number by heart and they will transfer me to the Washington number office which I don't know by heart. I'm sort of a creature of habit that way. I'm also used to speaking to Susan's assistant, Angie, who, you know, she can track her down for me. So even if I knew she was in the Washington office, I would have called the New York office by default.

Mr. CHERTOFF. You can't explain why Evelyn Lieberman would have called directly to the Washington office and left a message at the Washington office?

Ms. DOYLE. No.

Mr. CHERTOFF. Would you agree with me, Ms. Thomases, looking at this objectively, it looks like there is a fair degree of interest on the part of the First Lady in getting in touch with you?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Then you arrive at the White House again shortly before 3:00 p.m. Mr. Barnett arrives. I'm not going to review. We have been through this with you and Mr. Barnett concerning the, I guess, variant testimony about the handling of the documents. The documents that had been originally taken from Mr. Foster's office and held in the residence for approximately 4 or 5 days are finally removed by an aide from Williams & Connolly at approximately 4:30 p.m. And then you are back in the residence again at 5:30 p.m. Do you recall knowing that Mr. Nussbaum was going to call the Attorney General and Mr. Heymann to come over to get a look at the note on that day?

Ms. THOMASES. No.

Mr. CHERTOFF. We now have Mr. Hubbell arriving at the residence, and although you do not remember the particular date of the meeting, you do remember there having been an initial meeting or discussion between yourself, Mrs. Clinton and Mr. Hubbell after Mr. Foster's death at which you discussed Mr. Foster; right?

Ms. THOMASES. Yes. Can I say to you, this idea of meeting suggests a formality that I don't think this gathering was about.

Mr. CHERTOFF. I will call it a gathering. You remember an initial gathering that occurred the first time you were all in each other's presence after Mr. Foster's death?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Although you don't remember the specifics of the conversation, you remember the gathering; right?

Ms. THOMASES. I remember the fact that I was—that it was—this is just an impression. I was very glad to see Webb and to give him a hug and I was glad we were together, yes.

Mr. CHERTOFF. And your recollection is that the note and the writing was not discussed with Mr. Hubbell?

Ms. THOMASES. I don't believe so.

Mr. CHERTOFF. Was there discussion with Mr. Hubbell about what the Attorney General was going to be shown?

Ms. THOMASES. No. I think this was a personal—my first recollection of my meeting with Webb and Hillary together, that it was all personal stuff. Remember, I had not been at the funeral. I had not been part of the mourning process. So, they shared that with me and we talked something about that.

Mr. CHERTOFF. Did you talk to Mrs. Clinton and Mr. Hubbell on this occasion about your last meeting with Mr. Foster?

Ms. THOMASES. I don't know that I did. I might have. I don't know that I did.

Mr. CHERTOFF. You may have on that occasion.

Ms. THOMASES. Yes.

Mr. CHERTOFF. Which I think we have now identified based on the records as the 27th. You may have said to Mrs. Clinton and to Mr. Hubbell that you had had a last meeting with Mr. Foster in which you discussed certain subjects; right? Correct?

Ms. THOMASES. I might have. I don't specifically remember that.

Mr. CHERTOFF. You do specifically remember recounting that last meeting to the President when you saw him on the 21st of July?

Ms. THOMASES. Parts of it.

Mr. CHERTOFF. That was the meeting which you did not or at least which does not appear in the FBI interview—

Ms. THOMASES. I can tell you I don't know that I talked to the President about the substance of the meeting, just that I felt guilty about having met with him and not having noticed how distressed he was.

Mr. CHERTOFF. Didn't you tell the President in detail about the meeting?

Ms. THOMASES. I don't know that I did. I don't, you know, if I said it in my prior testimony, I would like you to show me where I said it.

Mr. CHERTOFF. You didn't say it in your prior testimony.

Ms. THOMASES. That's what I'm saying.

Mr. CHERTOFF. Again, I want to go to "Blood Sport," page 298. Down to the bottom it reads as follows, this is relating to the 21st: "Susan Thomases arrived just as the meeting was breaking up and met with the President later that afternoon." Is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. "He said he still could hardly believe it, that he was taken totally by surprise." I take it that's correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. "Thomases said she had had an inkling and then told him in detail of her meeting with Foster the previous week." Is that correct?

Ms. THOMASES. I don't know that I said to him that I had an inkling, because I too was taken totally by surprise.

Mr. CHERTOFF. Did you tell the President in detail of your meeting with Foster the previous week?

Ms. THOMASES. No, I told him about how guilty I felt, having met with him, that I hadn't noticed how depressed he must have been.

Mr. CHERTOFF. Did you discuss your meeting with the President with Mr. Stuart?

Ms. THOMASES. I don't know that I did.

Mr. CHERTOFF. I want to be quite clear before my time runs out. You reject, therefore, Mr. Stuart's account that: "Thomases said she had an inkling, then told him in detail of her meeting with Foster the previous week"? That is incorrect?

Ms. THOMASES. I don't know that I told that to Mr. Stuart in quite that way. If at all.

Mr. CHERTOFF. Let me break it into two parts. Is it, first of all, factually correct in the conversation with the President did you say that you had had an inkling and then told him in detail of your meeting with Foster the previous week?

Ms. THOMASES. No. I primarily focused on how badly and how guilty I felt that I had not noticed what distress he was in.

Mr. CHERTOFF. I'm afraid, Ms. Thomases, you are still not quite precisely answering the question. There are two parts to this. The first part is, as a matter of fact, in the meeting you had with the President, did you say that you had had an inkling and did you then tell the President in detail of your meeting with Foster the previous week?

Ms. THOMASES. I would not have—I probably would have said, if I said that I should have had an inkling, not that I did have an inkling, because I didn't have an inkling. I was totally surprised.

Mr. CHERTOFF. What about the second part?

Ms. THOMASES. And I do not believe that I gave him the details of my conversation with him except as to maybe the personal parts of the conversation in which he talked about how much he missed his house in Little Rock.

Mr. CHERTOFF. So your testimony is you did not give him a detailed or very substantial account of your meeting with Foster the previous week? That is factually incorrect?

Ms. THOMASES. That's factually incorrect.

Mr. CHERTOFF. Your testimony is you did not tell Mr. Stuart the things that appear in this paragraph or this particular sentence?

Ms. THOMASES. Well, let me keep reading the paragraph.

Mr. CHERTOFF. I will just limit it to the sentence, but you can read the paragraph.

Ms. THOMASES. He said the details of my meeting with Foster. I mean, I don't think I told him all of the details of my meeting with Foster.

Mr. CHERTOFF. Putting aside all the details, it is a pretty simple question. Basically is what Mr. Stuart wrote here about what you told the President, is that what you told Mr. Stuart or not?

Ms. THOMASES. Excuse me? Could you repeat it?

Mr. CHERTOFF. What Stuart has written about your conversation with the President, is this what you told Stuart or not?

Ms. THOMASES. I don't know. I think Stuart may have—it works literally. It works as part of the story. It doesn't mean I told him that I told the President—him everything that I had discussed with the President.

Mr. CHERTOFF. I know it doesn't necessarily mean it. That's why I'm asking you.

Ms. THOMASES. I doubt that I told Stuart everything that I discussed with the President that day.

Mr. CHERTOFF. Again, you are answering every question but the one I'm asking. Did you tell Stuart that in the meeting with the President you said you had an inkling or should have had an inkling and that you told the President in detail of your meeting with Foster the previous week? Did you say this to Stuart or not?

Ms. THOMASES. No.

Mr. CHERTOFF. Fine, thank you.

Mr. CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Thomases, we are going into excruciating detail once again about a conversation as to whether you told President Clinton everything in detail about your last conversation with Vincent Foster as though that would have some bearing or relevance to any of the subjects which we are investigating.

If there is some nexus, if you had told President Clinton in detail about the fact that Mr. Foster had expressed concern given the fact that Senator Dole had called for Congressional investigations of the Travel Office matter. Obviously, Mr. Foster would be concerned about having the adequate staff, as you have testified, to meet the responsibility of preparing adequately for Congressional hearings and every other thing that he would have to do with respect to the Travel Office matter from a standpoint of the work to be accomplished, whether you had told that to the President or not told that to the President eludes me as to its relevance to this Committee.

But we have now established from you in terms of your best recollection that you believe you told the President that you felt guilty that you did not have a sense that Mr. Foster was so disturbed about matters that he was contemplating taking his own life, otherwise you would have acted in some way to presumably try to help Mr. Foster or get him help in terms of coping with the things that were troubling him so.

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. Notwithstanding whether or not Mr. Stuart is correct in all respects, we are not doing a detailed book review of "Blood Sport" here. From time to time it has come up. We have talked about certain things that were omitted or misstated as they relate to areas under our inquiry. But it is not my purpose to simply take this book from start to finish and point out all the inconsistencies or the consistencies or a review of his writing style or the dramatization of conversations and so forth and so on. But what I guess we are interested in is your best recollection. To the extent that something can help that recollection, we are prepared to show it to you, without evaluating whether it is accurate or inaccurate, because I don't think that is our Committee's function.

On the basis of all of this, have you now, for I can't imagine how many times, given your best recollection of your knowledge of Mr. Foster's state of mind and the conversations you had about it to the extent you had any, both before and after Mr. Foster's death?

Ms. THOMASES. No, I don't. I mean, about his state of mind?

Mr. BEN-VENISTE. Have you now given your best recollection?

Ms. THOMASES. Yes, I have given you my best recollection.

Mr. BEN-VENISTE. Based on all of the information that has been assembled and reassembled and re-reassembled for your appearance here?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. We'll cede back our time.

Mr. CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Thomases, following up on the earlier question, what I was trying to arrive at is this: You knew that Travelgate was a problem for Vince Foster and the First Lady; is that right, after your conversation with Mr. Foster?

Ms. THOMASES. Can you separate that question into both parts?

Senator FAIRCLOTH. All right. You knew that Travelgate was a problem for Vince Foster?

Ms. THOMASES. I know it was troubling to him.

Senator FAIRCLOTH. Did you know that it was troubling the First Lady?

Ms. THOMASES. I don't believe it was troubling the First Lady.

Senator FAIRCLOTH. We will get by that. Did this lead you to your concern about the search of Vince Foster's office upon his death, that you were concerned about the search and is this why you and the First Lady or the First Lady did not want unfettered access to Foster's office?

Ms. THOMASES. Could you again split the question into its parts for me?

Senator FAIRCLOTH. Having known that Vince Foster was worried about Travelgate, is that why you did not want unfettered access to his office?

Ms. THOMASES. I had no interest in this supposed unfettered access, which is someone else's term and not mine, to his office.

Senator FAIRCLOTH. It is not your words? You didn't use that?

Ms. THOMASES. It is not my words.

Senator FAIRCLOTH. Did you tell Mr. Nussbaum you did not want anybody going in his office, whether you used the word "unfettered" or what?

Ms. THOMASES. I didn't use that word or any phrase like that.

Senator FAIRCLOTH. Did you tell Mr. Nussbaum you did not want anybody going in that office?

Ms. THOMASES. No. As I have testified before, I mostly listened to Nussbaum tell me how he was going to handle the documents in that office.

Senator FAIRCLOTH. You gave the FBI an interview on July 14th. Yet you couldn't remember the conversation with Mr. Foster then.

Mr. BEN-VENISTE. That's not true.

Senator FAIRCLOTH. But in 1995, 2 years later—

Mr. BEN-VENISTE. That's the wrong date.

Senator FAIRCLOTH. —you could remember the conversation when you spoke to Mr. Stuart who was writing a book you thought friendly to the Clintons.

Ms. THOMASES. I remember that conversation when I talked to each of the law enforcement persons who talked to me, and I also remember the conversation last year when Mr. Ben-Veniste asked me about it in the course of my first deposition.

Senator FAIRCLOTH. Did you tell the FBI about your conversation with Mr. Foster?

Ms. THOMASES. You mean—which conversation with Foster?

Senator FAIRCLOTH. The one that you had prior to his committing suicide.

Ms. THOMASES. He was interested in whether I had a reason for why Mr. Foster died. As I have told everybody, I was not ready to speculate on the reason that Mr. Foster took his life.

Senator FAIRCLOTH. Did you tell the FBI about your conversation with Mr. Foster prior to his taking his life?

Ms. THOMASES. He didn't really ask about it.

Senator FAIRCLOTH. And you didn't think this was pertinent information that you ought to tell and something the FBI would be very interested in, but it was important enough to tell to James Stuart later when he was writing a book that you thought was friendly to the Clintons; is that right?

Ms. THOMASES. Is that a question?

Senator FAIRCLOTH. Yes, that's a question.

Ms. THOMASES. I had already testified on this matter to various law enforcement authorities, and I thought it was OK to share that with James Stuart.

Senator FAIRCLOTH. Ms. Thomases, when you first appeared before this Committee, you came billed as a lady by the press, by the White House staff, as a lady who was, you have heard all the terms, but as Hillary's blunt instrument, that you were the juicer and you were the juice. We heard all these descriptions of you, but

that you were all over the White House, in the middle of everything and knew everything.

Now, I must say, when you come before us, I think I said before, you came somewhat as a lost lamb totally. You couldn't remember, you didn't remember, you didn't know. A totally different approach from the reputation you brought, the history you had and how you had handled and conducted yourself prior to that as a tough, quick, sharp, accurate, told everything.

Now before this Committee from day one, it has been "I don't know, I don't remember, I don't know." Would you tell us, are you trying to mislead the Committee? Are you leading us to—that you don't know. Or were you always so vague in the White House that you just had them confused? Who is being misled? Where does Susan Thomases stand? That's just the basic question I want to know. Which are you? Are you a lost lamb or the juicer?

Ms. THOMASES. Senator, I have no intention of misleading anybody.

Senator FAIRCLOTH. I have no further questions at this point.

Mr. CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Ms. Thomases, I'm interested. You indicate to us that you told the Committee in your deposition on July 17th about your last meeting with Mr. Foster. Now, I assume you are referring to your testimony on page 127, where you indicated that over time Mr. Foster had expressed general concerns about the Travel Office, about the resources that would be necessary to handle the work. Would you find me the portion that indicates that you had a meeting in the Mansion with Mr. Foster at his request a week before he took his life?

Ms. THOMASES. No, the location of the meeting was not discussed or identified, but the substance of the meeting was, in fact, discussed.

Mr. CHERTOFF. In fact, Ms. Thomases, you never indicated that there was a specific last meeting which had been set up at Mr. Foster's request?

Ms. THOMASES. That's correct.

Mr. CHERTOFF. You did not indicate that?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Let me now turn to another subject which is your activities during the campaign. We have a considerable number of your notes that you took down in February and March of 1992, when you were involved in assisting the campaign dealing with questions about Whitewater. Do you have those in front of you?

Ms. THOMASES. No, I don't.

Mr. CHERTOFF. Let me suggest that they be pulled. They are in the package we gave you. It is handwritten and it is tough to miss.

Mr. CHAIRMAN. We are bringing a set down.

Mr. CHERTOFF. To set a context for this, Ms. Thomases, you were asked to get involved in dealing with the issue of Whitewater inquiries that were being raised by the press?

Ms. THOMASES. Yes.

Mr. CHERTOFF. For how long in the campaign, for what period of time did you serve that function?

Ms. THOMASES. A relatively short period of time.

Mr. CHERTOFF. A few weeks?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Why did you stop serving that function?

Ms. THOMASES. Because I had recommended to them that they find an accountant to sort through this, which Jim Lyons did.

Mr. CHERTOFF. And you passed it over to Jim Lyons?

Ms. THOMASES. I passed over all my materials to Jim Lyons.

Mr. CHERTOFF. I want to direct your attention to certain pages of the notes and ask you to explain them. At the bottom of the notes are the various page numbers. Let me start with ST 23. Do you have that page?

Ms. THOMASES. Yes.

Mr. CHERTOFF. This particular page is headed "February 20th." What does this particular page of your notes reflect?

Ms. THOMASES. It reflects the notes that I was taking down when Loretta Lynch was talking to me on the phone. If you look at an earlier page.

Mr. CHERTOFF. Who is Loretta Lynch?

Ms. THOMASES. She was the young lawyer who was gathering the materials in Little Rock.

Mr. CHERTOFF. She was reporting to you by telephone?

Ms. THOMASES. Yes.

Mr. CHERTOFF. In this particular passage, there is a kind of chronology. I take it this came from Loretta Lynch?

Ms. THOMASES. Yes.

Mr. CHERTOFF. There is an entry for 1982. It says, "Rose Law Firm represents McDougal and he paid." What does that reflect?

Ms. THOMASES. I don't know except exactly what is written there.

Mr. CHERTOFF. Am I right that there was an issue that arose in the campaign based on Mr. McDougal's allegation that at some point in 1984, the President came by to see him and asked him to give legal work to Hillary Clinton? I should say the then-Governor Clinton came by to see McDougal and asked him to give legal work to Hillary Clinton?

Ms. THOMASES. Could you repeat the question?

Mr. CHERTOFF. Was one of the allegations or the issues that you were addressing in the campaign a statement by McDougal that in 1984, Bill Clinton had come by his office to request that McDougal give legal work to Hillary Clinton?

Ms. THOMASES. I would have to go through my other notes because I don't—I don't remember that off the top of my head.

Mr. CHERTOFF. You don't remember that issue?

Ms. THOMASES. Off the top of my head as part of my responsibility.

Mr. CHERTOFF. In fact, wasn't that one of the most pivotal issues because McDougal was essentially saying that he had given legal work to Hillary Clinton as a favor to Bill Clinton? Wasn't that one of the big issues in the campaign that reporters were raising?

Ms. THOMASES. I don't remember it. If you will give me some time, I will try to look through my notes to see. But I don't have much independent recollection of this.

Mr. CHERTOFF. All right. Well, if you don't remember that, we will move on to the next question.

Ms. THOMASES. If you want me to answer it, then give me some time. Maybe I can find you what you are looking for.

Mr. CHERTOFF. We will see if any more other passages here come to mind a little bit more easily. Then maybe we can take a break and you can review them.

I want to go to page ST39. This is headed "Questions for HC." It says, "Gerth" in the upper right-hand corner. I take it this was a list of questions that Mr. Gerth was requesting you get answers to from Mrs. Clinton; correct?

Ms. THOMASES. It looks like that.

Mr. CHERTOFF. I want to go two-thirds of the way down the page. In large letters you have written "Bill Kennedy and Carolyn Huber Cooperation Issue." What was that?

Ms. THOMASES. I have testified before I don't know specifically what that refers to.

Mr. CHERTOFF. Do you know generally what it refers to?

Ms. THOMASES. Not really.

Mr. CHERTOFF. Was there a concern about whether or not Ms. Huber would cooperate with the campaign in saying certain things?

Ms. THOMASES. I don't know whether it was say or give certain materials. I don't know.

Mr. CHERTOFF. You think there was a question in the mind of the campaign about whether or not Ms. Huber was withholding materials?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Let me move on to ST43. It is headed "6/7/92. TC Bruce Lindsey." That indicates this occurs in June; right?

Ms. THOMASES. Yes. I suspect that I misdated the page.

Mr. CHERTOFF. Misdated in what way?

Ms. THOMASES. Because it is in a sequence of pages. They were all in order on my note pad and therefore—

Mr. CHERTOFF. You think this is March?

Ms. THOMASES. I think this is March.

Mr. CHERTOFF. This is based on a telephone conversation with Bruce Lindsey?

Ms. THOMASES. Yes, that's what it indicates.

Mr. CHERTOFF. About a third of the way down the page, the following passage appears. Actually let me begin at the beginning. "Re: BC's comments." I guess BC is Bill Clinton; correct?

Ms. THOMASES. Correct.

Mr. CHERTOFF. "Not sure owned a bank when you started White-water, friends since 1966, real estate deals with people BC knew. No, all I did was lose money. J. McDougal said he want to buy them out one time. HC wanted an accounting before they sold it out." Am I reading that accurately?

Ms. THOMASES. Pretty accurately.

Mr. CHERTOFF. Did Mr. Lindsey tell you that Mr. McDougal wanted to buy the Clintons out at one time, but that Mrs. Clinton wanted to have an accounting before they sold out?

Ms. THOMASES. Could you repeat that?

Mr. CHERTOFF. Did Mr. Lindsey tell you that Mr. McDougal wanted to buy the Clintons out at one time, but that Mrs. Clinton wanted to have an accounting before she sold out?

Ms. THOMASES. This is what my notes indicate.

Mr. CHERTOFF. Were your notes an accurate reflection of what was said?

Ms. THOMASES. I tried to accurately record what was told me.

Mr. CHERTOFF. But you have no memory of this?

Ms. THOMASES. I have no independent memory of this.

Mr. CHERTOFF. All right. Let me go to—

Senator DODD. Now, Mr. Chairman, on this point regarding the McDougal issue. First of all, with all due respect, the issue of the campaign was it's the economy, stupid, as I recall. But the Pillsbury Madison & Sutro law firm looked at this allegation concerning the conflict in testimony between McDougal and Mrs. Clinton. And on pages 23 and 24 of their report, they reject for a number of reasons McDougal's story.

It is worth noting, Mr. Chairman, that after an independent analysis, the law firm identified, on page 24, at least three reasons why they believe that Mr. McDougal's side of the story is not believable. I think that should be noted.

Mr. CHAIRMAN. I would also note that we are going to have the Pillsbury Madison people in Friday morning.

Senator DODD. I appreciate it. Thank you, Mr. Chairman.

Mr. CHAIRMAN. I think we only have a few more minutes.

Mr. CHERTOFF. I want to go to ST46. There is writing on this page which is a page from a calendar, February 11, 1992. What does this writing reflect?

Ms. THOMASES. I must have written the notes on that page because that was just available. I don't think the date was relevant to my note. It was just I was flipped on that page, someone called, I took down the notes on there.

Mr. CHERTOFF. What is the basis for these notes? I mean, it says here in the second paragraph, "John Latham, firm had not done anything for retainer, retained by Madison." Then I can't read the next two lines. Why don't you read those?

Ms. THOMASES. "Latham." I can't read the next word either. "That he was irritated."

Mr. CHERTOFF. Who told you that Latham had the view that the firm had not done anything for the retainer?

Ms. THOMASES. I don't have any idea.

Mr. CHERTOFF. So you don't remember how you came by that notation; right?

Ms. THOMASES. I don't know how I came by these notations.

Mr. CHERTOFF. Now, I want to go to ST47. This is a letter you received from Jeff Gerth of The New York Times. Are these marginal notations your marginal notations?

Ms. THOMASES. Yes, it looks like my handwriting.

Mr. CHERTOFF. Let me go to the third paragraph. This is addressed to you. It says:

You have said that Hillary recalls the Madison account being brought into the Rose Firm by Rick Massey. McDougal says that it came after a request from Mr. Clinton, who discussed it in Mr. McDougal's office, mentioning the couple's need for financial help.

Off to the left you have a little notation, "BC has no recollection." Where did you get that from?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Did it come from Mr. Clinton?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Would you read us the rest of that section there?

Ms. THOMASES. Which section?

Mr. CHERTOFF. Right below "BC has no recollection" in your own handwriting.

Ms. THOMASES. "What McDougal" I really cannot read my own handwriting. I don't know where the original is of this.

Mr. CHERTOFF. What about next to Arabic numeral 2 where it says, "Henley BC said not" and I can't read the last word. Can you read your handwriting there?

Ms. THOMASES. I can't read it.

Mr. CHERTOFF. How did you come by information that Susan McDougal's brother, one of the Henleys, was present during this?

Ms. THOMASES. Looking at this copy, it says, "McDougal's brother-in-law. No. 1, Clinton never had anything. No. 2, Henley BC said not" whatever that word is that I can't read.

Mr. CHAIRMAN. No recollection.

Ms. THOMASES. Maybe it was "reco." And No. 3, there is nothing written there.

Mr. CHERTOFF. Now where did you get this from?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Did you discuss with Mr. Stuart your various activities during the course of the campaign during this period we have been examining in this round in terms of tracking down information about Whitewater?

Ms. THOMASES. No.

Mr. CHERTOFF. So whatever Mr. Stuart wrote in the book concerning your activities during the campaign did not come from you?

Ms. THOMASES. No. Correct, it did not come from me.

Mr. CHERTOFF. I see my time is up, Mr. Chairman.

Mr. BEN-VENISTE. Let me just cover a couple of issues and we will cede the rest of our time.

Obviously, while this may seem to be a big campaign issue for the 1992 election in Mr. Chertoff's questioning, from your standpoint I take it the question of whether Mr. McDougal somehow responded to a request by the President in sending work in the grand amount of \$22,000 of legal business, which was all performed by the Rose Firm in a way that the Pillsbury investigation and the RTC concluded as being innocuous, appropriate and above board, and appropriate legal work, was not a significant issue of the 1992 election campaign.

Ms. THOMASES. Correct.

Mr. BEN-VENISTE. The question of Mr. McDougal's recollection, I guess it needs to be put into some kind of context, because every time I read about it in the newspaper, somehow the ellipse between the time that Mr. McDougal first claimed to remember this than contact with the President and the actual request to perform legal services is never mentioned, which is perhaps the most striking circumstantial reason to disbelieve that Mr. McDougal was accurate when he first made the statement of his recollection which he has since clarified and I think rejected.

The point is that Mr. McDougal, when he first talked about President Clinton jogging over to his office, remembered that it was a sweltering day in August of I guess it was 1984 when he claims the President asked about legal work or he offered legal work and

the President thought it was a good idea, whatever version you want to take.

But the important point is that according to our investigation, the only legal work that was performed was originated in April, actually, toward the end of April 1985, so that you would have, if Mr. McDougal's recollection was then accurate, a 9-month gestation between the planting of the seed of this idea of legal work and the request to actually perform legal work, which is rather farfetched, would you not agree?

Ms. THOMASES. I agree.

Mr. BEN-VENISTE. So that the whole idea whether this was important or unimportant to the campaign, the notion of the nexus between the legal work in the Rose Law Firm has been explored in minute detail, not only by this Committee but by the RTC through a \$4 million study that it commissioned, which included the Pillsbury Madison firm and its report.

So that all this questioning about Mr. McDougal's version of the origination of these legal fees seems at this point to have been exhaustively examined. People can make up their own mind, as the Pillsbury firm has and as the RTC has, in accepting Pillsbury's conclusions, that it is unlikely that Mr. McDougal's initial recollection of these events was accurate. It doesn't make him a bad person, but people remember things differently after the passage of time. And clearly in Mr. McDougal's case, having had heart surgery and the severe bout with manic-depressive illness, it is not entirely unexplainable.

But there is the record, and the only other thing I would want to clear up is I think perhaps Senator Faircloth misspoke when he questioned you about a July interview by the FBI which would seem to suggest that you were interviewed in the days or weeks following Mr. Foster's suicide. Indeed, the report that we have been discussing occurred on the basis of a telephone interview of you June 14, 1994, 11 months after Mr. Foster's death. I think the record should be clarified in that regard. Is that correct?

Ms. THOMASES. That's correct.

Senator SARBANES. Ms. Thomases, I just want to be clear on one thing. These notes that you were being questioned about, which seem to be dated beginning February 20th and running through mid-March 1992, there is one note, and I take it you say the one page, the date is just wrong? It says 6/7 and it should be 3/7, I assume, from the chronology?

Ms. THOMASES. Yes.

Senator SARBANES. The last one you think you were just making notes using that message pad and date book from your telephone directory; is that right?

Ms. THOMASES. Yes. It was just in front of me when someone must have been talking to me, so I just scribbled what was being said in there.

Senator SARBANES. You have no independent recollection about these matters, now some 4 years later?

Ms. THOMASES. Correct.

Senator SARBANES. So what you are testifying is on the basis of what you wrote down here in your notes; is that correct?

Ms. THOMASES. Yes, Senator.

Senator SARBANES. Thank you.

Mr. BEN-VENISTE. Just to put a cap to that, these notes were turned over by you last fall to this Committee?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. These were not destroyed or lost or mutilated. These were your notes, and whatever is in them you have acknowledged you wrote at the time, more or less contemporaneous with the event, and you have turned them over pursuant to this Committee's request?

Ms. THOMASES. Absolutely.

Mr. BEN-VENISTE. We would cede back our time.

Mr. CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Let me conclude by just addressing these last couple of points. I think, Ms. Thomases, in fact, you—I mean, you are a bystander on this issue. The record is really far from clear that Mr. McDougal's original rendition of how it is that the Rose Law Firm came to be hired is incorrect. In fact, we will explore that very issue here on Thursday, and I think I can predict with some degree of confidence that there is a considerable amount of evidence that supports the notion that Mr. McDougal did, in fact, decide to take steps to help the Rose Law Firm in the fall of 1984, not in April 1985, that the account that we originally heard from Mrs. Clinton about her involvement in bringing the work in, I think, is inconsistent with some of the evidence of records concerning the course of dealings between the Rose Law Firm and Mr. McDougal.

I think that, in fact, what is going to emerge is that there are witnesses that this \$4 million group of Pillsbury attorneys never talked to who would have shed a considerable amount of light on the events about which they offered very firm opinions, and, of course, we will examine them at some point and determine why it is that they didn't see fit to talk to some of the witnesses with pertinent information.

We, however, when we reach a final conclusion within a few weeks, will have the benefit of talking to these additional witnesses, people who were affiliated with the Bank of Kingston, which was Mr. McDougal's first bank, as well as some other people.

In particular with respect to you, Ms. Thomases, I would like to direct your attention to the last couple pages of your notes, ST46 and ST47. In ST46, and this really goes to the heart of this issue about whether one can assume that the payments to the Rose Law Firm began in April 1985, when legal work started to be performed. It appears from the notes you have here that you had some information from some source that Mr. Latham was annoyed because the firm hadn't done anything for the retainer. That seems to suggest that perhaps there was a lag time between the time money was paid and the time the work was performed. Again, I want to ask you, do you remember the source of that information?

Ms. THOMASES. No.

Mr. CHERTOFF. Finally, Ms. Thomases, I would like you to go to the letter from Mr. Gerth on ST47. In the next to last paragraph on that page, Mr. Gerth writes to you as follows:

As I told you last week, McDougal asserts that his wife is out \$40,000 and he says his losses are somewhat greater than that. He has not produced any document

to back that up, but the documents I have reviewed suggest he was subsidizing Whitewater through loans and payments to a far greater extent than the Clintons. Can I see any other documents you have on this issue?

Next to that in the right-hand margin, what did you write?

Ms. THOMASES. "Call Jim Guy Tucker."

Mr. CHERTOFF. Why on earth would you want to call Jim Guy Tucker to ask him a question about Whitewater?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Did someone tell you to do it?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Did you do it?

Ms. THOMASES. No, I did not do it.

Mr. CHERTOFF. You remember not doing it?

Ms. THOMASES. I don't believe I spoke to Jim Guy Tucker.

Mr. CHERTOFF. Did Mr. Clinton tell you to talk to Mr. Tucker?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Well, let me see if I can——

Ms. THOMASES. Can I look at my records?

Mr. CHERTOFF. I am going to direct you to your records. Look at ST 36, toward the bottom of the page.

Ms. THOMASES. Just a second. I need to have my lawyer show me a clearer copy.

Mr. CHERTOFF. Do you have it?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It is dated 2/22/92 and right before the entry for 2/27/92, it says in your handwriting, "Have Gerth call Tucker, BC told me to call Tucker." BC is Bill Clinton?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Does that help you understand that Bill Clinton told you to call Jim Guy Tucker?

Ms. THOMASES. That's what the note says.

Mr. CHERTOFF. And the note's in your own handwriting?

Ms. THOMASES. Yes.

Mr. CHERTOFF. So it must be true?

Ms. THOMASES. It must be true that I wrote it down.

Mr. CHERTOFF. It must be true that Mr. Clinton told you to do that. You didn't make it up, right?

Ms. THOMASES. Correct.

Mr. CHERTOFF. You had not reason to lie to your own notes?

Ms. THOMASES. That's right.

Mr. CHERTOFF. My question is this: Why on earth would you be calling Jim Guy Tucker about questions relating to Whitewater?

Ms. THOMASES. I don't know, and I don't remember calling Mr. Tucker.

The CHAIRMAN. The Committee stands in recess.

Senator SARBANES. Mr. Chairman, could I ask our schedule for the rest of the week, if Counsel could just run through the that, I would appreciate it.

Mr. CHERTOFF. Tomorrow, we have Mr. Norton and Mr. James, who are going to be testifying on some of the tax issues, and some of the issues involving the Clintons' investment in Whitewater.

On Thursday, we will be having witnesses who will testify about the manner in which the Rose Law Firm was retained and the circumstances of that.

Senator SARBANES. That's a panel of four witnesses?

Mr. CHERTOFF. Several witnesses. I don't remember off the top of my head, I think it's four. Then on Friday morning, we will have the Pillsbury people.

Senator SARBANES. Next week?

Mr. CHERTOFF. That's as far as we've gotten.

The CHAIRMAN. We have not scheduled anything yet.

Senator SARBANES. We don't have anything scheduled yet.

The CHAIRMAN. Not at this time.

Senator SARBANES. I thought we had Hale scheduled.

The CHAIRMAN. We have not had a response, nor have we, either in writing or by any way of telephonic communication. As soon as we do, we will share that immediately. We have a letter out there, as you know, but we just have not had any response. Maybe Counsel, later today, or tomorrow, will take that question up with Mr. Hale's lawyer as to whether he will be coming in.

Mr. CHERTOFF. Well, as to whether he will claim Fifth Amendment privileges. And I just have no way of knowing.

Senator SARBANES. Tomorrow we are going to meet at 9:30, not 10:00 a.m.?

The CHAIRMAN. Yes, 9:30 a.m.

We stand in recess.

[Whereupon, at 12:45 p.m., the hearing was recessed, to reconvene at 9:30 a.m. on Wednesday, May 15, 1996.]

[Appendix supplied for the record follows:]

3035

21084

Queen ~~left~~ left

- DNC crawling
went strong

- Members of the Cabinet
provided briefing
for bpg

mk Briefing 13 or 14 people
1005 of briefing

7am - no coffee
or food served

- Thomas

went to Mac
Hollan went there
people feed

Mac wouldn't do it
DW didn't want to do it



CONFIDENTIAL

FEDERAL BUREAU OF INVESTIGATION

Date of transcription

6/16/94

SUSAN P. THOMASES, was contacted by telephone at the law firm of WILLKIE, FARR, and GALLAGHER, 113 East 53rd Street, New York, New York where she is employed as an attorney and a partner. After being advised as to the official identity of the interviewing agent and the nature of the interview, Ms. THOMASES provided the following information:

She resides at _____, New York, New York, has a non-published home telephone number, _____. She works the majority of her time in New York City but with her firm having had an office in Washington, D.C. since 1981, she routinely comes to Washington on Wednesdays and returns to New York on Thursday evenings. She is the managing partner of her firm's Washington, D.C. office.

She first met VINCENT FOSTER, JR. in Arkansas during 1976 through her friends BILL and HILLARY CLINTON. She served with HILLARY CLINTON on the Children's Defense Board and has known both HILLARY and BILL CLINTON for approximately 20 years. She regarded VINCENT FOSTER as a friend although she only saw him approximately once or twice a year during the period 1976 through 1991, when she would visit the CLINTONS and/or come to Arkansas on business.

In July, 1991, she moved to Arkansas to begin working full time on BILL CLINTON's Presidential campaign. During the entire campaign, she was in charge of daily scheduling for CLINTON and for campaign events. She continued this work on a part-time basis throughout the transition period from the BUSH administration to the CLINTON administration handling scheduling matters for the newly elected President. Toward the end of the transition period in December, 1992, she returned to her law practice in New York and Washington. Since she had met many volunteers during the CLINTON campaign who took positions with the new administration, she often visited with them during her weekly trips to her Washington, D.C. office. She therefore during the campaign, transition, and the first six months of the

(telephonically)

Investigation on 6/14/94 at New York, New York File # 29D-LR-35063 SUB

OIC 000

by _____

Date dictated 6/14/94

CONFIDENTIAL

29D-LR-35063 SUB A

Continuation of FD-302 of SUSAN T. THOMASES . On 6/14/94 . Page 2

CLINTON administration, got to know VINCENT FOSTER fairly well.

She last saw VINCENT FOSTER on Wednesday or Thursday before his death. She believes that they had lunch together with some other people in Washington. She recalls him mentioning he planned to take a weekend trip to the eastern shore of Maryland. She noted no change in his demeanor or physical appearance but was aware that he was working very hard and was under considerable pressure. His death came as a complete shock to her and she can offer no reason or speculation as to why he may have taken his life.

Ms. THOMASES continues to regard HILLARY and BILL CLINTON as friends and visits with them from time to time when she is in Washington.

OIC 000418

House. He seemed to consider the suggestion, but apparently never took her advice.

On July 11, Foster was again complaining to his wife about the travel office, which he was convinced would lead to congressional hearings. He called James Lyons, who'd handled Whitewater during the campaign, for advice on Travelgate, asking him to come to Washington. Lyons agreed to meet with Foster the following Wednesday, July 21. But Foster again told Lisa that he intended to resign. Lisa told him she was tired of hearing about it, and suggested he write down what was bothering him. He should take the offensive, she said, and defend himself.

Foster went upstairs. Taking a pen and a piece of yellow legal paper, he wrote:

"I made mistakes from ignorance, inexperience and overwork.

"I did not knowingly violate any law or standard of conduct.

"No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the travel office. There was no intent to benefit any individual or specific group.

"The FBI lied in their report to the AG.

"The press is covering up the illegal benefits they received from the travel staff.

"The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation.

"The Ushers Office plotted to have excessive costs incurred, taking advantage of Kaki and HRC.*

"The public will never believe the innocence of the Clintons and their loyal staff.

"The WSJ editors lie without consequence.

"I was not meant for the job or the spotlight of public life in Washington. Here ruining people is considered sport."

After the exercise, Foster's mood seemed to brighten. He said to Lisa, "I haven't resigned yet. I've just written my opening argument."

The following Wednesday, Susan Thomases was in the White House, as had become her weekly custom, and dropped by to see

* The reference apparently refers to redecoration of the White House by the ushers office and Kaki Hockersmith, the Clintons' decorator from Little Rock.

Nussbaum. She was worried about Foster. As someone who saw him less, the change in his appearance and demeanor was more noticeable. "How is he?" Thomases asked about Foster. "Has he relaxed?"

Nussbaum was feeling good about progress on Ruth Ginsburg for the Supreme Court and Louis Freeh for the FBI. "We're feeling good," he said. "This is coming together."

Thomases wondered if the "we" really included Foster. "Help take the weight off his shoulders," she said. "You've been focusing on Ginsburg, and Vince is carrying the load."

"I'm going to get Vince the help he needs," Nussbaum said, acknowledging that they were all overworked. "Let's get through this first. It will be calmer."

Earlier, Foster had turned to Thomases to express frustration over the travel office report, and, like many in the White House, she had become something of a confidante. Now she tried to reassure Foster, but he said he needed to talk to her "off the campus," somewhere they wouldn't be seen. Thomases suggested 2020 "O" Street, a private rooming house where she herself sometimes stayed in Washington.

When Foster arrived that evening, Thomases thought he looked a little better. He looked around the house and seemed amused by its garish Victorian decor. He mentioned that he and Lisa were going to get away for the weekend. But then he began to unburden himself.

He mentioned how overworked he was and how he lacked the time and the support staff he was used to in Little Rock. If he didn't get more help, he said, he was afraid he'd "let the president and Hillary down." Predictably, he brought up the travel office affair, adding that he didn't trust David Watkins, who he feared might fabricate or embellish the facts to cover himself—possibly at the expense of the first lady. And he indicated he was homesick, not just for Little Rock, but for the quieter, predictable life he had there.

But then the conversation took a curious turn. One thing he had not missed about his life in Little Rock was Lisa, his wife. The marriage had not been what he'd hoped for, and it hadn't been for years. He had to make all the decisions in the family. She was completely dependent on him, and this had become a burden. He found he couldn't confide in her. Lisa's recent arrival in Washington

had brought this to the fore, just when Foster himself needed someone to lean on.

Thomases didn't know what to say. Foster seemed calm, dignified—but infinitely sad.

The next night Foster complained to Lisa that his heart had been pounding, and on Friday he had his blood pressure checked at the White House. Two readings were taken, and both were normal. After Foster told her the results, Lisa suggested he call their family physician in Little Rock.

The same day, Foster called his sister Sheila Anthony, and told her he was depressed. His voice, she thought, sounded tight and strained. She herself had suffered from depression, and she offered to help. She gave him the names of three psychiatrists he might contact, and offered to call any of them on his behalf. Foster said she should wait; he wanted to think about talking to a psychiatrist over the weekend. He said he hadn't yet obtained his White House security clearance (one of many administrative procedures far behind schedule in the Clinton White House) and he was afraid that if he had to answer that he was under the care of a psychiatrist, it would be denied. Still, Foster did call one of the psychiatrists mentioned by his sister, once at 12:41 P.M. and again at 1:24, each time taking the precaution of charging the calls to his home phone. The psychiatrist wasn't in; apparently Foster reached the answering machine but left no message.

That afternoon, Foster and Lisa drove to the Eastern Shore of Maryland for dinner. Foster seemed in an even darker mood than earlier in the week, and was again talking about resigning. "Do you feel trapped?" Lisa asked him. Tears welled up in his eyes, and he began to cry. Though he wanted to quit immediately, Lisa urged him to finish the year, then stay in Washington until their son could graduate from high school.

It turned out the Hubbells were also on the Eastern Shore that weekend, staying with Michael and Harolyn Cardozo, friends of the Hubbells. They invited Vince and Lisa to join them for dinner Saturday and to return for the day on Sunday. Tennis pro Nick Bollettieri, a friend of the Cardozos, was also visiting, and Lisa was excited at the prospect of taking a tennis lesson with him. Lisa also got to play with Pam Shriver, the tennis star, but Foster didn't come to watch the match. That evening and the next day, Hubbell and

we'd be supportive of each other and we'd work together, and we would laugh together, and we would play together, and we would always keep in mind our mission, which is to protect the interest of our client, our wonderful client, the president of the United States and the other people in the White House."

Finally President Clinton came to the microphone. Speaking of Foster, he reminded his staff that "When I started my career in Arkansas politics, he was there to help me. When I decided to run for attorney general, he was the first lawyer in Little Rock I talked to about supporting me. When the Rose Law Firm hired Hillary after I moved to Little Rock, Vince Foster and Webb Hubbell became her closest friends."

Then he reiterated points raised by McLarty, making them more forcefully. "I want you to think about the following: in the first place, one can never know why this happened. Even if you had a whole set of objective reasons, that wouldn't be why it happened, because you could get a different, bigger, more burdensome set of objective reasons that are on someone else even in this room. So what happened was a mystery about something inside of him."

Clinton concluded by emphasizing the need for discretion. "And the last thing I want to say is that Vince Foster spent a lifetime knowing when not to put himself first. And maybe he did that too much. But he had an extraordinary sense of propriety and loyalty, and I hope that when we remember him and this, we'll be a little more anxious to talk to each other and a little less anxious to talk outside of our family. We'll be a little more concerned about how we can help one another look good and achieve one another's goals, rather than how we might pursue our own objectives at the expense of someone else here. Those are the kinds of things that he would never have done."

Despite the president's admonitions, trying to stem talk and conjecture about a suicide in the White House was futile, human nature being what it is. The audience filed out quietly, but most work in the White House all but came to a halt.

④ Susan Thomases arrived just as the meeting was breaking up, and met with the president later that afternoon. He said he still could hardly believe it, that he was taken totally by surprise. Thomases said she had had an inkling, then told him in detail of her meeting with Foster the previous week. Clinton said that if he'd

known, he would have dragged Foster over for the movie and would have tried to cheer him up.

Even though virtually everyone in the White House, from the president on down, had by now heard some accounts of Foster's depression, the official line remained that Foster's death was unfathomable. Foster himself had been such a private person that it seemed unseemly to mention anything so personal, and everyone in the White House was eager to spare the Foster family any embarrassment. McLarty briefed the press that afternoon, emphasizing that, "Try as we might, all of our reason, all of our rationality, all of our logic, can never answer the questions raised by such a death." Meanwhile, Lisa and other members of the Foster family retained James Hamilton, the Clinton campaign lawyer who'd handled some early Whitewater inquiries, as the family lawyer. Aside from the Arkansas contingent, people in the White House didn't know Lisa all that well, and there was concern she might be a "loose cannon." But Hamilton, too, did all he could to cut off inquiries, emphasizing that Foster had been a victim of a disease, depression, that had struck him at random. He rebuffed press efforts to speak to Lisa, emphasizing the family's interest in privacy. (No one appears to have raised any questions about the propriety of a Clinton campaign lawyer representing the Foster family.)

When Nussbaum returned to his office, the Park Police officers were waiting: "What are you doing here?" Nussbaum asked, as if he'd forgotten the entire earlier meeting. They reminded him that they wanted to search Foster's office, and that he'd promised to check with the attorney general. But Nussbaum was already hearing concerns about the search from McLarty and others in the White House. He didn't feel ready to let them go ahead, and later he suggested they return the next day at 10 A.M. Meanwhile, they could schedule interviews with people in the office, but he wanted lawyers present. The police officers were furious, both at their thoughtless treatment, and the way the investigation was being handled. It was becoming clear to them that the entire investigation would now be tightly controlled by the White House.

When Nussbaum had first talked to McLarty about letting the Park Police conduct their investigation, he'd said he was inclined to let them in to do their search. But McLarty had had reservations, and now concerns started pouring in to Nussbaum. Bill Burton,

[118] Ms. Thomases. Good morning.
 [119] Mr. Ben-Veniste. May I ask you how it was that you
 [120] learned that Vince Foster has died?
 [121] Ms. Thomases. I was home in my apartment in New
 York.
 [122] and Hillary Clinton called me.
 [123] Mr. Ben-Veniste. What do you recall about that
 [124] conversation?
 [125] Ms. Thomases. It was very sad. She told me that
 Vince

Page 74

[11] had taken his life. We went through a period of
 talking
 [12] about how sad we felt. We then talked about how
 hard it was
 [13] going to be, not only on his wife but on his three
 children.
 [14] That is what we talked about.
 [15] Mr. Ben-Veniste. In that conversation, did anything
 come up with respect to any contents of Vincent
 Foster's
 [17] office? Any files?
 [18] Ms. Thomases. Absolutely not. It was not that kind of
 [19] a conversation.
 [110] Mr. Ben-Veniste. Now in that conversation, I believe
 [111] you have indicated that Mrs. Clinton knew of your
 practice
 [112] to come to Washington on a regular basis on each
 Wednesday?
 [113] Is that correct.
 [114] Ms. Thomases. That's correct.
 [115] In fact, she asked me specifically whether I was
 going
 [116] to be going to Washington the next day, and I said to
 her I
 [117] was not able to go early because I had some work
 that I had
 [118] to complete with respect to my practice which
 required that
 [119] I go to my New York office on Wednesday morning,
 but as soon
 [120] as that task was completed that I would—it was my
 plan to
 [121] go to Washington for some other business that I
 needed to do
 [122] that day and that, yes, I would be in Washington.
 [123] Mr. Ben-Veniste. And at approximately what time did
 you
 [124] arrive in Washington?
 [125] Ms. Thomases. Some time after two o'clock in the

Page 75

[11] afternoon.
 [12] Mr. Ben-Veniste. So it is fair to say that there was
 [13] nothing in the conversation between you and Mrs.
 Clinton
 [14] that caused you to revise your plan to work in your
 office
 [15] in New York. I take it, during the morning that
 Wednesday of

[16] July the 21st, and then come to Washington as you
 had
 [17] planned to?
 [18] Ms. Thomases. There was nothing in my
 conversation with
 [19] Mrs. Clinton that suggested that I should, and I could
 not
 [110] because I had an obligation in another area.
 [111] Mr. Ben-Veniste. And what was the request that was
 made
 [112] of you by Mrs. Clinton once you came to Washington
 in that
 [113] initial conversation?
 [114] Ms. Thomases. Hillary Clinton asked me to
 please—she
 [115] said to me—she asked me if I had intended to go to
 the
 [116] White House. I said I thought that I might stop by
 there
 [117] and see how people were doing.
 [118] She said, would you please find out when my
 husband, the
 [119] President, is going to be there and please be sure to
 see
 [120] him; and, also please be sure to talk to Maggie
 Williams to
 [121] see if she were okay.
 [122] Mr. Ben-Veniste. What did you do once you arrived in
 [123] Washington?
 [124] Ms. Thomases. Since I didn't have to be at my
 [125] Washington office until close to four o'clock, I went

Page 76

[11] immediately to the White House to see if the
 President were
 [12] available, which I didn't know, and to talk to Maggie.
 [13] Mr. Ben-Veniste. And did you talk to the President?
 [14] Ms. Thomases. I did not talk to the President at that
 [15] time. I came back to the White House after I
 completed my
 [16] work at my Washington office and saw him at that
 time.
 [17] Mr. Ben-Veniste. Later on in the afternoon or early
 [18] evening?
 [19] Ms. Thomases. Yes, in the early evening.
 [110] Mr. Ben-Veniste. What was the substance of that
 [111] conversation?
 [112] Ms. Thomases. It was more reviewing again our
 sense of
 [113] helplessness and sadness that we had not been as
 sensitive
 [114] as we might have been to what we then believed was
 a
 [115] tremendous amount of pain that Vince must have
 been in.
 [116] We talked about that. He was very specific about how
 he
 [117] had had a conversation with Vince and had intended
 to have
 [118] him at the White House, and we each talked about

(19) opportunities in which we could have in fact perhaps had we
 (20) known of the problem, done something.
 (21) Mr. Ben-Veniste. Did in this conversation you had with
 (22) President Clinton any question arise with respect to the
 (23) contents of Mr. Foster's office?
 (24) Ms. Thomases. None whatsoever.
 (25) Mr. Ben-Veniste. Who else did you see that day?

Page 77

(1) Ms. Thomases. I saw numbers of people who were milling
 (2) around the White House sort of coming to terms with their
 (3) feelings about Vince's death.
 (4) It was sort of like being at a wake. I can't
 (5) specifically tell you who I saw and who I talked to. I did
 (6) not initially see Maggie when I first went to the White
 (7) House that day.
 (8) Mr. Ben-Veniste. Did you learn that President Clinton
 (9) had assembled the White House staff and spoken to them as a
 (10) group in terms of trying to console them in their grief?

(11) Ms. Thomases. Yes. I had learned that. I in fact
 (12) regretted that I had arrived too late to be there to hear
 (13) his statement, and also to hear Mack speak. Mack McLarty
 (14) speak. I did regret that I was not there because it sounded
 (15) as if it was sort of a memorial meeting that gave some
 (16) solace.
 (17) Mr. Ben-Veniste. Did you understand that Mr. Nussbaum
 (18) also spoke at that meeting?
 (19) Ms. Thomases. So I was told.
 (20) Mr. Ben-Veniste. Now do you recall who else you saw
 (21) that day?
 (22) Ms. Thomases. I know that it is hard to imagine—I
 (23) think the only people that I specifically remember seeing,
 (24) because I was so focused on seeing the President, were I
 (25) stopped by and saw some of the young women who had worked

Page 78

(1) for me during the campaign who I knew would have been rather
 (2) upset at the idea of a suicide.
 (3) I don't really remember specifically. I mean, for
 (4) example, I am sure I wanted to see Bruce but I actually do
 (5) not specifically remember seeing Bruce.
 (6) Mr. Ben-Veniste. Now let's go to the following day.
 (7) Did you have a conversation with Mr. Nussbaum on the morning

(8) of the 22nd?
 (9) Ms. Thomases. Yes, I did.
 (10) Mr. Ben-Veniste. And that is a conversation that you
 (11) have described in some detail?
 (12) Ms. Thomases. Yes.
 (13) Mr. Ben-Veniste. Did there come a time when you had a
 (14) follow-up conversation with Mr. Nussbaum in terms of the
 (15) procedure that was employed for the review of the document?
 (16) Ms. Thomases. I think I spoke to him not necessarily
 (17) that day but at some subsequent time in which he told me
 (18) that he felt that it had gone pretty well, but I don't think
 (19) it was necessarily on that day.
 (20) Mr. Ben-Veniste. Now, Ms. Thomases, you were asked
 (21) about whether there was some other writing than the one that
 (22) we have all been talking about over these four weeks of
 (23) hearings that was found but never disclosed.
 (24) You have answered that question in the negative.
 (25) Let me ask you whether you have any knowledge from any

Page 79

(1) source that any document or writing whatsoever from Mr.
 (2) Foster's office was either destroyed or obfuscated or hidden
 (3) in some way from the investigators?
 (4) Ms. Thomases. I have no knowledge of any document that
 (5) was hidden or not disclosed to the investigators.
 (6) Mr. Ben-Veniste. Mr. Lindsey, let me ask you the same
 (7) question, sir. Do you have any knowledge from any source as
 (8) to whether any document in Mr. Foster's office was
 (9) obliterated, destroyed, shredded, or otherwise made
 (10) unavailable to the police in connection with the request
 (11) that they had made?
 (12) Mr. Lindsey. No, sir. I do not.
 (13) Ms. Thomases. I would just like to say, I don't know
 (14) that everything was made available to them. I just don't
 (15) know that anything was destroyed or obliterated.
 (16) Mr. Ben-Veniste. Well that was my question—
 (17) Ms. Thomases. Yes.
 (18) Mr. Ben-Veniste. —Ms. Thomases, whether you have
 (19) knowledge—not direct knowledge; that was not the limitation
 (20) of my question, so that you understand it—whether you have
 (21) knowledge from any source, direct or indirect, as to whether

ACTIVITIES AT THE WHITE HOUSE **JULY 26-27, 1993**

3090

TIME	MONDAY, JULY 26, 1993	SOURCE
15:00	Stephen Neuwirth "discovers" Foster writing and tells Bernard Nussbaum.	BN 7/12/95 p.278, 282
	Nussbaum shows the First Lady the note.	BN 7/12/95 p.286 SN 7/10/95 p.192, 201
	Nussbaum calls Susan Thomases and tells her about the note.	8/8/95 hrg. p. 174
17:24	Thomases calls Patricia Solis's office for 3 minutes.	ST120
17:33	Thomases calls White House Scheduling Office for 3 minutes.	ST120
TUESDAY, JULY 27, 1993		
	Secret Service logs indicate the First Lady stayed in the Residence all day.	S020921
	Solis leaves a morning message for Thomases stating, "HRC wants to see you today."	ST126
11:33	Thomases calls Solis's office for one minute.	ST123
12:20	Thomases calls White House operator for 3 minutes.	ST123
12:35	Thomases calls White House operator for 20 seconds.	ST123
12:36	Thomases calls Thomas McLarty's office for 9 1/2 minutes.	ST123
13:00	Thomases calls McLarty's office for 2 minutes.	ST123
13:30	Thomases receives a message at her Washington office: "Please call Hillary."	ST131

ACTIVITIES AT THE WHITE HOUSE

JULY 26-27, 1993

3091

TIME	TUESDAY, JULY 27, 1993	SOURCE
14:50	Thomas arrives at the White House.	12/07/95 Treasury fax
15:03	Barnett arrives at the Residence.	S020921
15:08	Thomas arrives at the Residence.	S020921
15:20	Williams up to the Residence.	S020921
16:30	Thomas and Barnett depart the Residence.	S020935
16:38	Williams & Connolly aide takes possession of Foster files in the Residence.	S020921
16:43	Williams down from the Residence.	S020921
17:00	Nussbaum asks Phillip Heymann and Janet Reno to come to the White House.	PH 7/21/93 dep. 103
17:27	Thomas back in the Residence and makes two calls.	ST128
18:29	Webster Hubbell arrives at the Residence. The First Lady and Thomas were in the Residence at the time.	S020921
19:00	Nussbaum presents the note to Heymann and Reno.	BN 7/12/95 dep. 330-331
20:19	Hubbell leaves the Residence.	S020921, S020935
20:20	Thomas exits the White House.	12/07/95 Treasury fax
20:44	Thomas makes a call from National Airport.	ST128

[14] Senator Faircloth. You couldn't get her. What did you
 [15] want to talk to her about?
 [16] Ms. Thomases. I wanted to find out how she was
 doing
 [17] and how she was feeling. She and Vince had
 become very
 [18] close, and I was as her friend, I was concerned that
 she
 [19] would be upset.
 [110] Senator Faircloth. Maggie Williams testified that
 [111] Hillary Clinton called her three times, including a call
 [112] prior to Maggie Williams going to the White House,
 and a
 [113] call immediately after Maggie Williams returns from
 the
 [114] White House.
 [115] As you know, a Secret Service agent has testified he
 saw
 [116] Maggie Williams removing documents from Mr.
 Foster's office
 [117] that night.
 [118] Ms. Thomases. did Hillary Clinton ever discuss
 Maggie
 [119] Williams, or documents, or removing them, or in any
 way
 [120] discuss Maggie Williams, documents, sending
 Maggie Williams
 [121] to the White House that night, or what she talked to
 Maggie
 [122] Williams about in those three straight calls--in any
 way.
 [123] now? Did you ever discuss with the First Lady why
 she spent
 [124] three calls on probably the most traumatic day of her
 life
 [125] to one woman. Maggie Williams?

Page 132

[11] The Secret Service has testified that they saw
 Maggie
 [12] Williams bring in a stack of documents out of the
 office.
 [13] Has the First Lady ever discussed that with you in
 any
 [14] way?
 [15] Ms. Thomases. The First Lady has never discussed
 that
 [16] with me in anyway. The First Lady never discussed
 any
 [17] documents with me on the night of Vince Foster's
 death, or
 [18] in the days immediately thereafter.
 [19] Senator Faircloth. Did you discuss your appearance
 here
 [110] today with Hillary Clinton?
 [111] Ms. Thomases. I did not discuss my opinion--my
 [112] appearance here today with Hillary Clinton.
 [113] Senator Faircloth. Ms. Thomases. with respect to
 your
 [114] relationship with the Clinton's, would you tell me

when was

[115] the first time you represented the Clintons either
 together
 [116] or separately in your capacity as an attorney?
 [117] Ms. Thomases. The first time I had any professional
 [118] dealings, when they had asked for my advice, was
 when
 [119] Hillary Clinton worked at the Rose Law Firm.
 [120] Senator Faircloth. Would you tell us what matters you
 [121] discussed with the Clintons? What was the advice?
 What
 [122] did you need their advice on, what it was?
 [123] Ms. Thomases. As I said earlier today, sir, I gave
 [124] Hillary Clinton and some of the other people at the
 Rose
 [125] Law Firm some accounting advice as to how they
 could set up

Page 133

[11] their books so that the time of those revenues from
 those
 [12] persons who were working on state business could
 be
 [13] segregated so that Hillary Clinton's earnings would in
 no
 [14] way reflect the earnings of the firm on their state
 [15] business.
 [16] Senator Faircloth. How long have you represented
 the
 [17] Clintons on Whitewater?
 [18] Ms. Thomases. Since the first quarter of 1992.
 [19] Senator Faircloth. Were you paid?
 [110] Ms. Thomases. No, I was not paid.
 [111] Senator Faircloth. What were your duties in
 [112] representing the Clintons as an attorney on
 Whitewater
 [113] issues?
 [114] Senator Dodd. Mr. Chairman, again I question the
 scope
 [115] of the area here, it seems to me. How does this relate
 to
 [116] the handling of the document?
 [117] The Chairman. Well, I think it goes to the entire--
 [118] Senator Faircloth. Well, Mr. Chairman--
 [119] The Chairman. Yes.
 [120] Senator Faircloth. If that doesn't relate to the
 [121] documents, we are talking about Whitewater
 documents. If we
 [122] can't ask her what she--when she represented the
 Clintons--
 [123] Senator Dodd. What does how much she got paid
 have to
 [124] do with the--
 [125] Senator Faircloth. Well that gets right back to how

Page 134

[11] intensive her work was on the documents.
 [12] The Chairman. Senator. I am going to let Senator
 [13] Faircloth continue.
 [14] Senator Faircloth. So what were your duties in
 [15] representing the Whitewater--as their attorney on the

question. Did you discuss with anybody at the White House in any way, shape, or form, the handling of

Foster's documents, that is to say, the documents that

in Vincent Foster's office at the time of his death?

Ms. Thomases. You know I had a conversation

with Bernie

Nussbaum about how he was going to handle the documents. I

discussed that with him. He told me how he was going to do

it the week before. That is the sole discussion I remember

having on that subject.

Mr. Chertoff. Did you have a discussion with the First

Lady about that subject?

Ms. Thomases. I do not ever remember discussing the

documents with the First Lady.

Mr. Chertoff. When you say you don't remember, are you

unprepared to simply tell us you never had a discussion like

that?

Ms. Thomases. I'm saying that at the time proximate to

Page 46

Vince Foster's death I do not believe I had a conversation

with Hillary Clinton about any documents.

Mr. Chertoff. You say at the time proximate to his

death.

Did you have a conversation with her at any time

about the handling of the documents ever?

Ms. Thomases. I might have in some subsequent times but

I do not believe that I ever discussed them with her at that

time, or anyone proximate to that time.

Mr. Chertoff. What was the discussion that you had with

her at some other time about the documents?

Ms. Thomases. It probably was in the context of these

hearings.

Mr. Chertoff. You mean you've discussed it with her

since the hearings have begun?

Ms. Thomases. No. But you know, just when it was

raised that I was coming down.

Mr. Chertoff. So you talked to her personally about your coming down to the hearings?

Ms. Thomases. This was way back when, before the first

hearing.

Mr. Chertoff. Back in the summer?

Ms. Thomases. Yes.

Mr. Chertoff. What was the discussion?

Ms. Thomases. Just that I was going to have to come

Page 47

down, and that I didn't think that I had very much

interesting to tell you, that you were still going to ask me

the questions because you felt the need to ask me the

questions.

Mr. Chertoff. Did you have a discussion with Mrs.

Clinton before you came down to the first set of hearings

about the telephone calls you two had had between each other

during the days after Mr. Foster's death?

Ms. Thomases. No, we did not discuss that.

Mr. Chertoff. Did you make an effort to refresh recollection about that?

Ms. Thomases. No, I did not.

Mr. Chertoff. There came a point in time when you were

asked to produce records concerning calls. Did you ask her

whether she had any records that might help you to put

together the sequence of calls on the days that we've been

looking at?

Ms. Thomases. No, I did not.

Mr. Chertoff. One of the points that we're struggling with here, Ms. Thomases, is the whole question of documents,

trying to find documents. An issue has arisen about certain

documents that involve not Whitewater specifically but the

Madison Guaranty Bank and the work that was done by the Rose

Law Firm at the Madison Guaranty Bank.

You had worked on that issue during the course of the

Page 48

campaign, is that correct?

Ms. Thomases. For a brief period.

Mr. Chertoff. You were aware of the fact that there was

a point in time in 1992 during the campaign that there were

questions being raised about the amount of work and the type

of work that Mrs. Clinton had done on behalf of Madison Guaranty, correct?

Ms. Thomases. Yes.

Mr. Chertoff. You understood that in connection with

that, it would be of great interest and importance to know,

to look at her time records, her time sheets, and her bills, correct?

Ms. Thomases. Could you repeat that question?

REPORT NO. HAVO 783
 RUN DATE 93/09/01
 VISITOR
 THOMPSON
 VISITEE
 CURRY
 SUSAN
 VISITOR SUMMARY FOR 93/08
 JIN -- TIME DATE LOC ROOM
 198700 1500 930829 C 164
 REQUESTOR
 CURRY
 PAGE NO 447
 BADGE TOA PDA

*



S 020561

212/

/ 202/

Geeth

- Q for HC
- ① Did you ever talk directly with McD
re- Madison S&L and Rose Lam and State
Security Comm 1.2.
published stock
brokerage sub
- introduced J. McD
to Rick Morley w/
John Leather
- ② Relling Moore is it related to WW -
HC does not remember
- ③ Robert Timmer on
that property.
- ④ Differentiated bet state & fed laws
2 directorships Public Private Industries
Inc. fees Now the Profit
State fed
over
\$1000
1990-91
\$7000
Children's TV workshop
1990 \$7200 1991 \$600
now for profit corp!!!

REDACTED

- ⑤ Where did she get corp records.
Did she get it from seven McD
who's brother bought it to you.
42 Seven McD contact.
Charles James off rec. 205 copies returned

Bill Kennedy & Carolyn Heber
Cooperation issue

- ⑥ Can we give Geeth WW 87 PS + off
Tax Returns.

⑦ Juan Hernandez Richard Maya/
Billie Leal / Luis Garcia

(19) but you don't recall it being near the time of the
 (20) discovery?
 (21) A Yes.
 (22) Q Did Mr. Nussbaum indicate to you whether or

Page 122

(1) not there was anything embarrassing to the First
 (2) Family or the White House in Mr. Foster's handwritten
 (3) note?
 (4) A In fact, he didn't tell me exactly what was
 (5) in the note when he told me about the note, but he
 (6) told me that it's all the kind of things that -
 (7) there was no surprises.

(8) Q And I just wanted to be a little more
 (9) specific in the question. Did you and he discuss
 (10) whether or not there was anything embarrassing to the
 (11) First Family or to the administration in Mr. Foster's
 (12) note?

(13) A We didn't specifically discuss that, but
 (14) his saying that there's no surprises implied to me -
 (15) Q It's implicit?

(16) A Yes.
 (17) Q Even though you didn't discuss it, at least
 (18) you implied that to be the case?

(19) A Yes.
 (20) MR. JOHNSON: Richard, I realize you used
 (21) to go and I think I'm generally complete on this
 (22) topic, although as we've discussed, I'll have some

Page 123

(1) more general questions of a wrap-up nature.
 (2) MR. BEN-VENISTE: Are they the usual Kip
 (3) Johnson wrap-up ones?

(4) MR. JOHNSON: The usual, which if
 (5) Ms. Thomases knew -

(6) MR. BEN-VENISTE: Call upon the witness to
 (7) do all the work.

(8) EXAMINATION

(9) MR. BEN-VENISTE:

(10) Q Ms. Thomases, my name is Richard

(11) Ben-Veniste, and I'm special counsel to the Minority
 (12) of this committee. Let me just ask you a few
 (13) questions regarding areas that Mr. Johnson covered,

(14) the first of which is your recollection of
 (15) Mr. Nussbaum's statement about had he known that
 (16) Mr. Foster's office would be considered a crime

(17) scene, he might have acted differently.
 (18) Was that statement made in a joking or

(19) other manner?
 (20) A It was far - it was a statement that was

(21) made after he already left the White House.
 (22) Q I know that you are not a trial lawyer or

Page 124

(1) much less a criminal lawyer, but did you have any
 (2) reason to believe that Mr. Foster's office was
 (3) considered by anybody as a crime scene?

(4) A No.

(5) Q So did you take his remark to mean that
 (6) people were treating the issue as though Mr. Foster's
 (7) office were a crime scene, but that was not really
 (8) the case?

(9) A Exactly. He was -
 (10) Q These things are not reflected on the
 (11) record and sometimes warrant some clarifying.

(12) A Thank you for clarifying.

(13) Q With respect to conversations with
 (14) Mr. Nussbaum on the 22nd of July prior to the time
 (15) that you left to return to New York City, I'd like to
 (16) focus on the process in the White House during those
 (17) first six months or so of the administration in terms
 (18) of whether issues were discussed by individuals in
 (19) the west wing who did not necessarily have the
 (20) responsibility for making decisions on those issues.

(21) Can you give us some idea of the process
 (22) that went on in the west wing when an issue was

Page 125

(1) thrown on the table for discussion? And I'm going to
 (2) ask you, then, about specifically with respect to an
 (3) issue like the appearance of the Park Police at the
 (4) White House.

(5) A While I was at the White House, almost at
 (6) some time every Wednesday I was not there enough

(7) to know what you are describing.

(8) Q The notion that people might be considered
 (9) or people might be discussing a particular issue,
 (10) would that strike you as being inconsistent with your
 (11) understanding of the way the Clinton Administration
 (12) was operating at that point, that there were people
 (13) who might be involved in discussing issues where
 (14) they, in fact, were not the decisionmakers?

(15) A My opinion is that's how the press has
 (16) characterized it, but I don't know whether that, in
 (17) fact, is the way -

(18) Q Did Mr. Nussbaum tell you in your
 (19) conversation with him on the 22nd what it was the
 (20) police were actually searching for?

(21) A He did not.

(22) Q In view of your assessment of

Page 126

(1) Mr. Nussbaum's emotional reaction to Mr. Foster's
 (2) death in those days immediately following the
 (3) suicide, could you describe what your mental
 (4) impression was of his state of mind at that point?

(5) A I'm not into - it's just not my style to
 (6) speculate on Bernie Nussbaum's state of mind.

(7) Q Did you get any impression? I'm not asking
 (8) you to speculate.

(9) A I mean, he was sad. He was sad. He had
 (10) not been Vince Foster's friend when he first came to
 (11) work at the White House counsel's office, and he felt
 (12) that they had become quite close, and so he felt a
 (13) certain guilt that having worked so closely with him,
 (14) that he had not noticed his state of mind, but that
 (15) may be me just projecting on him.

(16) Q Was there a point where you looked back
 (17) over your contact with Vincent Foster over the days
 (18) and weeks immediately preceding his death and
 (19) reviewed whether there were any statements that he
 (20) made to you about matters that he was working on that

(21) you felt he took more seriously than they warranted?
 (22) A I think he was - the whole Washington

Page 127

(1) experience, physically moving here and everything

was

(11) not what he had hoped it would be.

(3) Q Let me ask you specifically about the
 (4) travel office investigation. Did Mr. Foster indicate
 (5) to you in substance that he was troubled by the way
 (6) that investigation had singled out people that he
 (7) knew personally?

(8) A Yes, he had expressed to me on occasion
 (9) that he was troubled by the travel office, not so
 (10) much that it had singled out people who were close
 (11) to

(12) him, but just that the whole thing was not - had not
 (13) been a happy experience.

(13) Q Did it seem to you that - let me ask this
 (14) question in a very neutral way. Did you form an
 (15) impression about whether he was ascribing to the
 (16) matters surrounding the travel office matter an
 (17) importance beyond what you might have regarded as
 (18) reasonable? Was he taking it too hard?

(19) A He saw it in the context of work, that it
 (20) was going to mean a lot more work and that he didn't
 (21) have the manpower and the resources to necessarily
 (22) handle the amount of work that went with it. That is

Page 128

(1) the context in which he spoke about it, you know,
 (2) that if, in fact, there were a Congressional
 (3) investigation, that it would mean more work.

(4) Q Did Mr. Foster ever express to you any
 (5) concern, personal concern about any aspect of what he
 (6) was working on with respect to Whitewater in the
 (7) weeks or months prior to his death?

(8) A You mean Whitewater, the transaction?

(9) Q Right, other than what you've testified to
 (10) here today.

(11) A No.

(12) Q What I'm trying to get to is whether
 (13) Mr. Foster said, in words or substance, this is
 (14) horrible, this is terrible, I can't bear this, this
 (15) is going to be so awful, did he say anything that
 (16) would give you the impression that the Whitewater
 (17) investment as it related to the tax returns or to the
 (18) disclosure materials he might have been working on,
 (19) was of grave concern?

(20) A He expressed no grave concern about it. It
 (21) was not an issue that he identified as having -
 (22) causing him concern, grave concern or anxiety or

Page 129

(1) whatever.

(2) Q When you described what Mr. Nussbaum said
 (3) he intended to do vis-a-vis protecting the various
 (4) interests involved in the documents in Mr. Foster's
 (5) office, and how he might disburse those materials
 (6) ultimately, you indicated that he had intended or he
 (7) said he was intending to send the materials to
 (8) Mr. Kendall.

(9) Now, I wonder whether you are telescoping
 (10) information that you have later learned into that
 (11) conversation on the 22nd because I'll tell you
 (12) frankly that I've heard no one mention that
 (13) Mr. Kendall was involved in representing the Clintons
 (14) up to that point and the information that we have
 (15) heard involved another partner at Williams &
 (16) Connolly?

(17) A Well, I may have telescoped it. I'm not -
 (18) I may, but it was Williams & Connolly. He may not
 (19) have been the particular lawyer at Williams &
 (20) Connolly, but I know he intended to transfer the
 (21) documents to Williams & Connolly. So if I made a
 (22) mistake, I correct it.

Page 130

(1) Q Do you have any knowledge from any source
 (2) whatsoever that any note or other writing explaining
 (3) his reasons for suicide was not turned over to law
 (4) enforcement authorities?

(5) A I have no knowledge of any note, any
 (6) writing that existed, that does exist currently that
 (7) has not been handed over to law enforcement
 (8) authorities.

(9) Q Do you have any knowledge from any source
 (10) that materials from Mr. Foster's office were
 (11) surreptitiously removed from that office?

(12) A No, I have no such knowledge.

(13) MR. BEN-VENISTE: I have nothing further at
 (14) this time. Can we go off the record for a second.

(15) (Discussion off the record.)

(16) EXAMINATION

(17) BY MR. JOHNSON:

(18) Q Let me follow up, real quickly,

(19) Ms. Thomases, on something Mr. Ben-Veniste raised.
 (20) In your conversation with Mr. Nussbaum, whether or
 (21) not it was Mr. Kendall, you did discuss that some
 (22) documents would be sent to Williams & Connolly; is

Page 131

(1) that correct?

(2) A That's what I believe I heard.

(3) Q And this was before the review of the
 (4) documents that took place in Mr. Foster's office; is
 (5) that correct?

(6) A Again, I may have telescoped my subsequent
 (7) conversation with Bernard after the documents were
 (8) looked at into that conversation before the
 (9) document:

(9) were looked at.

(10) Q Focusing on the one that took place before,
 (11) did Mr. Nussbaum indicate to you that there were
 (12) going to be documents sent to the Clintons'
 (13) attorneys?

(14) A Yes.

(15) Q Do you have any indication of how
 (16) Mr. Nussbaum knew there would be documents in
 (17) Mr. Foster's office that should be sent to the
 (18) Clintons' personal attorneys?

(19) A I think that Mr. Nussbaum must have known,
 (20) as I did, that Mr. Foster had been working on the

2/20

McDougal White Water Property & McD

Ted Jark had a work examining report
examination in this particular
loan. Jark Bunch does not recall
problem with this loan.
Jark implied that loan was
sub-standard in some way.

Collateral was sufficient for the loan
interest free or low interest.
Was McDougal at his limit when HC
took the loan.

1966-74 McDougal had full right of use

1970-80 McD head of ED Committee
for BC

or 1980 He leaves BC administration
Steve Smith follows him to work
taken to Bangor Madison
Bank & Trust.

1981 Madison Bank & Trust make
the loan to HC on Corp w/
BC & HC as guarantors

1982 Rose Law rep. McDougal &
his part

action of McD Buy: Madison Security
StL

1983 - State Bk Dept comes down on
Madison Bank & Trust to increase
capitalization

1985 McD represented by Rose from
on retirement

1985-6 McD sold interest in B & T

1986 Reforced out of Madison StL
by Bv. Barclay

1987 taken over by FSLIC / Dollar
& rep in receivership

1988 McD indicted / acquitted of crime

1990 Jersey trial acquits McD

To Bruce Lindsay

~~No one owned a back when~~

you started white water

Friends since 1966

not state don't w/ people bc
known

"No, all I did was lose money."

I McD said he went to buy them
out one time.

HC worked on ecting before
he sold it out

"Totally trust deal."

TE w BC 110, in retrospect, ~~because~~ I never
intended to law on it.

Did he
own beaver - all Steve Smith
Talis Steel

Fall's Speed / Pay the don

~~I~~ ^{if} I would not do it again
 because I ~~want~~ would rather
 give \$ in debt I "would not"
 "survive or keep the wish."
~~I~~ ^{the} ~~did~~ ^{not} have to do it / Bank,
 I ~~would~~ ^{should} avoid ~~happening~~ ^{happening}
 of conflict

"LAST MONEY"

I would not make such an investment ~~in any business~~ ^{in any business} that was ~~repulsive~~ ^{repulsive} to even the state of Arkansas.

I have never by the state of Arkansas ^{non}
made an investment nor would I ^{in an}
make an investment in an ^{entity}
entity ^{where there} regulated utility state of ^{was not}
Arkansas ^{adequate cost-benefit}

FEBRUARY 1992

324 Days Left

NAME	PLACE	SUBJECT	HOURS
------	-------	---------	-------

JANUARY 1992													S M T W T F S							MARCH 1992												
S	M	T	W	T	F	S	2nd Mo							1	S	M	T	W	T	F	S											
							2	3	4	5	6	7	8		1	2	3	4	5	6	7											
9	10	11	12	13	14	15	9	10	11	12	13	14	15	8	9	10	11	12	13	14	15											
16	17	18	19	20	21	22	16	17	18	19	20	21	22	15	16	17	18	19	20	21	22											
23	24	25	26	27	28	29	23	24	25	26	27	28	29	22	23	24	25	26	27	28	29											
30	31													30	31																	

TO BE DONE TODAY (ACTION LIST)

Madison Springs a loc -

- owned Bell Mountain all
not just by on bank land
plus linearity

John Walker.

for a red not done
anything for Peter
Red red by Madison
Lester in first place
he was involved

Madison Sch. Black

chase down down

Office of the County Clerk
Arkansas Div. - filled

He was about
exchange. leave for
rejoined...

NOTES & MEMOS MADE TODAY

The New York Times

WASHINGTON BUREAU
1427 I STREET, N.W.
WASHINGTON, D.C. 20005
(202) 882-0300

March 9, 1992

Susan Thomas
Wilkie, Farr and Gallagher

Dear Ms. Thomas,

I have some further questions pertaining to the McDougal/Clinton relationship. I thought it best to put them in writing. I do not know what my deadline is, but I think we both should operate on the assumption that I will need answers by 6pm today. If that changes I will let you know as soon as I know.

Marlin Jackson, the banking commissioner in 1983, told me he warned Mr. Clinton that year about shoddy practices by McDougal and his bank, Madison Bank and Trust in connection with an action against the bank. This was one reason the Clintons moved their loan out of the bank, he said. What does Mr. Clinton remember about this? Should it have given him pause about continuing his dealings with Mr. McDougal?

You have said that Hillary recalls the Madison account being brought into the Rose firm by Rick Massey. McDougal says it came after a request from Mr. Clinton, who discussed it in Mr. McDougal's office, mentioning the couple's need for financial help. By Mr. McDougal's account, Hillary came by a few hours later and discussed a retainer arrangement with Mr. McDougal. Do either of the Clintons have any recollections concerning this?

Mr. McDougal has also said Gov. Clinton requested help in retiring his campaign debt in 1984, resulting in a dinner, which you said you had confirmed. Is there anything more you want to add about this, in light of the questions raised one year earlier by Jackson about McDougal?

The Clintons say they lost \$25,000 in Whitewater? Do you have any document to back that up and if so could I have a copy? If that can be demonstrated, I would very much like to do so in print.

As I told you last week McDougal asserts that his wife is out \$40,000 and he says his losses are somewhat greater than that. He has not produced any document to back that up, but the documents I have reviewed suggest he was subsidizing Whitewater through loans and payments to a far greater extent than the Clintons. Can I see any other documents you have on this issue?

The checks stubs we both have reviewed show repeated overdrafts in Whitewater's account at Madison. Were the Clintons aware of this? Do you have evidence that Whitewater paid any kind of interest or fee in connection with the overdrafts?

No copy of the Whitewater. Whitewater would raise

Evidence McD on 1: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

ST 0000047

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, MAY 15, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Mr. Norton, Mr. James, would you please stand for the purpose of taking the oath?

[Witnesses sworn.]

The CHAIRMAN. Mr. Norton, Mr. James, do you have any statement that you would like to give at this time to the Committee?

SWORN TESTIMONY OF GAINES B. NORTON, JR. CERTIFIED PUBLIC ACCOUNTANT

Mr. NORTON. No, sir.

SWORN TESTIMONY OF CHARLES E. JAMES ACCOUNTANT

Mr. JAMES. No.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Norton, you're an accountant?

Mr. NORTON. Yes.

Mr. CHERTOFF. You prepared or helped prepare the Clintons' personal tax returns for a period of years in the late 1970's and early 1980's?

Mr. NORTON. That's right.

Mr. CHERTOFF. What were the tax years?

Mr. NORTON. 1977 through 1983.

Mr. CHERTOFF. When you put together the returns, where did you get the information you used to prepare the returns?

Mr. NORTON. From the President and Mrs. Clinton.

Mr. CHERTOFF. They gave you the underlying documents, or did they give you summaries on paper?

Mr. NORTON. Summaries.

Mr. CHERTOFF. Mr. James, you are an accountant also?

Mr. JAMES. Yes, sir.

Mr. CHERTOFF. Were you the accountant for James and Susan McDougal for a period of time?

Mr. JAMES. Yes, sir.

Mr. CHERTOFF. You'll have to move the mike a little closer. For what period of time?

Mr. JAMES. I started in 1976 and I did it to approximately 1986.

Mr. CHERTOFF. All right, Mr. Norton, I would like to turn to you first, and I would like to direct your attention to the period of time in approximately 1978. Were you called to a meeting by Bill Clinton with respect to a particular investment in a project that we have come to know as Whitewater?

Mr. NORTON. I was.

Mr. CHERTOFF. It was Mr. Clinton who asked you to come to the meeting?

Mr. NORTON. It was.

Mr. CHERTOFF. Where was the meeting held?

Mr. NORTON. It was in an office on Cantrell Avenue. And I don't remember the exact address, but I believe it was Jim McDougal's office.

Mr. CHERTOFF. That would be in Little Rock?

Mr. NORTON. In Little Rock.

Mr. CHERTOFF. What did Mr. Clinton tell you was the reason he wanted you to come to the meeting?

Mr. NORTON. He wanted me to look at an investment he was making.

Mr. CHERTOFF. And did he tell you who was going to be at the meeting?

Mr. NORTON. Other than Jim McDougal, that's all he told me. It was going to be himself and Jim McDougal.

Mr. CHERTOFF. Besides yourself, Jim McDougal, and Mr. Clinton, was there anybody else at the meeting?

Mr. NORTON. There was another person.

Mr. CHERTOFF. Who was that?

Mr. NORTON. I have no memory of his name.

Mr. CHERTOFF. Was it an accountant?

Mr. NORTON. My memory is that it was an accountant.

Mr. CHERTOFF. An accountant representing Mr. McDougal?

Mr. NORTON. That's right.

Mr. CHERTOFF. Mr. James, were you the person who was at the meeting?

Mr. JAMES. Sir, I do not recall being there.

Mr. CHERTOFF. Do you know whether Mr. McDougal had another accountant that he worked with from time to time?

Mr. JAMES. No, sir, I don't know.

Mr. CHERTOFF. All right. So I guess that person will remain unidentified. Would you tell us what was discussed at this meeting, Mr. Norton, between yourself, Mr. Clinton, Mr. McDougal, and Mr. McDougal's accountant?

Mr. NORTON. Would it be easier if I just recounted what I remember of the meeting?

Mr. CHERTOFF. Yes.

Mr. NORTON. Mr. McDougal described a transaction that he and President Clinton were going to invest in a piece of land in North Arkansas, and that land would be subdivided and sold off in pieces for a profit, to make money out of it. And that it would be structured in an S corporation, a corporation elects subchapter S status.

Mr. CHERTOFF. Did they tell you where they were going to get the money for the investment?

Mr. NORTON. They said it would be borrowed, 100 percent of it would be borrowed.

Mr. CHERTOFF. Did they have a desire to arrange this transaction so that even though they were going to use 100 percent borrowed money, they would immediately be able to take tax deductions on a personal basis?

Mr. NORTON. That's right.

Mr. CHERTOFF. Now when you heard about this plan to structure it this way, to be able to take personal deductions based on 100 percent borrowing, what did you say in the meeting?

Mr. NORTON. When Mr. McDougal explained that there would be no equity in the company by the individual shareholders, and that the corporation would borrow 100 percent of the purchase price, I asked him if there would be startup losses the investors intended to take on their individual returns, and he said, yes. I asked what would be used as tax basis.

Mr. CHERTOFF. What was the reason you needed to know what the tax basis would be? I mean, what would be the relationship between that and the ability of the Clintons let's say to take tax deductions?

Mr. NORTON. Well, in order for me to prepare the Clintons' tax return, if there was startup losses flowing through to them individually, I'd have to know whether they individually had tax basis in that S corporation in order to take those losses.

Mr. CHERTOFF. What did Mr. McDougal say that their tax basis would be?

Mr. NORTON. Guaranteed debt.

Mr. CHERTOFF. What was your response to that?

Mr. NORTON. I told them that you could not use as individual shareholder tax basis in an S corporation.

Mr. CHERTOFF. That would not be proper under the tax laws?

Mr. NORTON. Would not be proper tax basis so they couldn't individually take the tax loss.

Mr. CHERTOFF. Then did Mr. Clinton say something to you?

Mr. NORTON. Well, then there was an exchange between Mr. McDougal and myself concerning that issue, and the accountant that was there actually had said that he thought for sure there were some regulations that allowed you to use guaranteed debt.

At that time, Mr. Clinton asked me to step out of the room, and the two of us stepped out. He said that this was a partnership between he and Mr. McDougal. Mr. McDougal was the lead partner on it. It was his deal and that he had to listen to what his partner said and that he had to rely on his partner to structure it tax-wise properly, and that I was to back off and leave the issue alone.

Mr. CHERTOFF. So when you raised a red flag, so to speak, about the way Mr. McDougal was proposing to structure this deal, Mr. Clinton basically pulled you outside, said that he wanted to rely on

his partner, Jim McDougal, and he told you specifically to back off and leave it alone?

Mr. NORTON. That's right.

Mr. CHERTOFF. I take it you followed his instructions?

Mr. NORTON. I kept my mouth shut.

Mr. CHERTOFF. Now, Mr. James, since you knew that this was a 100 percent borrowed money deal, no money coming out of the pockets of the investors, did you know the same thing about this Whitewater deal? Did you know it was going to be 100 percent borrowed money, no equity or no personal money out of the investors' pockets?

Mr. JAMES. I did not have anything to do with the—before it was incorporated.

Mr. CHERTOFF. Well, I want to put a set of facts before you gentlemen to see whether either of you can shed light on another peculiarity that arises, another inconsistency that arises with respect to the startup of this investment. I mean, I think we've established for you, Mr. Norton, that Mr. Clinton's philosophy in this was he wanted specifically to rely upon Mr. McDougal to structure this. When you raised issues or questions about the propriety of Mr. McDougal's approach, his word for or his instruction to you is to back off and leave it alone. He kind of averted his eyes from it.

Another question has arisen as to how active Mr. Clinton was in obtaining the original financing. As recently as the last few weeks, the President testified in the trial in Little Rock, by way of video tape. He was asked certain questions about whether he had been involved in initiating this 100 percent financing that you've been talking about.

I want to read to you from pages 58 and 59, and pages 61 and 62, of his testimony, which we'll put before you in a moment. We have someone sitting behind you getting it. These are questions to the President in the trial in Little Rock. At line 23:

Question: Well, did you ever initiate or undertake an active role in obtaining the financing for Whitewater Development Corporation, itself?

Answer: No, sir, I did not.

Then as we move on to page 61, the question is put again, even more specifically. At line 18:

Question: Did you ever know or meet a Harry Don Denton that worked at Union National Bank?

Answer: I know who Don Denton was. I'm not sure I met him at that time or whether he was the loan officer on the note.

Question: Did you have anything to do with acquiring the initial financing from Union National Bank?

Answer: I'm not sure. I might have, because I had some friends who worked there and I knew the people who owned the bank, but I'm not sure.

So that's a something of a kind of a change of the position.

But then when we go to the testimony of Mr. Denton before this Committee, just last week, Mr. Denton gave a much fuller picture of Mr. Clinton's role in obtaining some of this 100 percent financing; in particular, the financing of the downpayment which was used as the leverage to get the rest of the loan. This is now at page 23 of our hearing testimony, which I'll put before you in a moment.

We have Mr. Clinton testifying that he didn't really have an active role, or at least he wasn't sure he had any kind of active role in getting the financing, although he did recognize Mr. Denton's

name. Then Mr. Denton was asked the following question, and I might add, before we had received or knew what the President's testimony was. At page 23, line 17:

Mr. CHERTOFF. Now were you told by the emissary from the owner of the bank why the owner of the bank wanted you to grant this loan to the McDougals and the Clintons?

Mr. DENTON. I was informed that the basis of the loan was Bill Clinton, who was described at that point as an up and coming political star, a rising star in the State of Arkansas.

Mr. CHERTOFF. So you were told that the owner of the bank wanted you to make the loan because it was to a group that included Mr. Clinton, and Mr. Clinton was viewed as having good political prospects. Is that right?

Mr. DENTON. That is accurate, yes.

Mr. CHERTOFF. Had you not gotten that instruction, would you, in your capacity as a bank officer, have approved an unsecured loan to Mr. McDougal and to Mr. Clinton and their wives?

Mr. DENTON. No.

So we have Mr. Denton's story which is to some degree different, and suggests that not only was Mr. Clinton an active participant in obtaining the financing, but that at least with respect to that 20 percent downpayment or the \$20,000 downpayment, he was the principal instrument of getting that financing.

Then we took the deposition of one of the two people who Mr. Denton had identified as the emissary who asked him to make the loan to Mr. Clinton. That's Paul Berry. Mr. Berry is a former roommate of Mr. Clinton and someone who knew Mr. Clinton quite well.

This is what Mr. Berry said at page 35 of his deposition, which was taken just a couple of days ago with respect to how it is that this \$20,000 loan was obtained on behalf of the Clintons and the McDougals. This was an unsecured loan, meaning there was no property used as collateral for it. Mr. Berry is the person that Mr. Denton identified as having asked him to make the loan or having brought the request for the loan to his attention. Page 35, line 3:

Question: All right. Just to close the loop on the \$20,000 loan, so it is your memory that it was Bill Clinton as opposed to Mr. McDougal who talked to you about the loan, about having the bank make that loan?

Answer: He was the one that—he discussed that he was contemplating, he and Mrs. Clinton were contemplating buying a piece of property on the White River, and I said, well, if you need to borrow any money, I'm sure we would like to handle it, which was my routine remark to all customers that I had a responsibility for when they expressed a credit need.

I don't remember ever specifically coming to understand the full scope of what that loan became, Mr. McDougal's—the overall project. In my mind, I thought that—the only thing that I ever really focused on was the original \$20,000. That it became involved or incorporated in a larger project was something that I don't have any specific memory of somebody sitting down and explaining to me.

The question I want to ask you if you can shed any light on, and I don't know if you can is, we have on the one hand, the President taking the position that he wasn't active in getting the financing, or at least at some point he says he's not sure about any activity with the financing. Yet Mr. Denton testified quite positively here, both in response to a question from Senator Simon and also questions from me, that Mr. Clinton was the reason that initial \$20,000 downpayment loan was made; and that Mr. Denton had received the request for the loan through an emissary of Mr. Clinton whom he described as this fellow, Paul Berry. Then Paul Berry, in fact, confirms that it was Mr. Clinton who went to him for the loan, and not Mr. McDougal.

My question to you gentlemen is, is it your understanding, if you have a basis to know, that Mr. Clinton was, in fact, actively involved in getting the financing for this project?

Mr. NORTON. I have no basis to know one way or the other.

Mr. CHERTOFF. He never discussed it with you?

Mr. NORTON. No.

Mr. CHERTOFF. Mr. James.

Mr. JAMES. No, sir, I have no knowledge of any of it.

Mr. CHERTOFF. So what we have on the record now then is Mr. Clinton's testimony on the one hand, and Mr. Denton's and Mr. Berry's testimony on the other.

Now, I want to move to another issue, again with respect to the issue of this investment and the taxes. You are aware, Mr. Norton, that in addition to this or prior to this Whitewater investment, there was another investment or other investments that Mr. Clinton made with Mr. McDougal?

Mr. NORTON. I'm not aware of any.

Mr. CHERTOFF. Were you responsible for preparing Mr. Clinton's tax return for the 1978 year?

Mr. NORTON. Yes.

Mr. CHERTOFF. Let me ask that you look at a document that is numbered LP 1602. It's a 1040 Schedule D Capital Gains or Losses for 1978. Is this a return you prepared?

Mr. NORTON. Yes.

Mr. CHERTOFF. Now it indicates here that there are three long-term capital gains transactions.

Mr. NORTON. Yes.

Mr. CHERTOFF. Or three entries for long-term capital gains. Two of the entries relate to an installment sale and one relates to a sale for 5 acres of land.

Mr. NORTON. I see that.

Mr. CHERTOFF. All right. Do you know what your basis was for entering these transactions?

Mr. NORTON. It would have been information supplied to me by President and Mrs. Clinton.

Mr. CHERTOFF. Let me show you another document we also have that relates to this. It is marked LP 672 and it is Installment Gain on Sale.

Mr. NORTON. I have the schedule.

Mr. CHERTOFF. Have you seen this before?

Mr. NORTON. Yes, I have.

Mr. CHERTOFF. Now did you prepare this yourself?

Mr. NORTON. Actually that's not my handwriting. One of my staff accountants would have prepared it, but I was responsible for it.

Mr. CHERTOFF. And to tie it in, the taxable gain on this installment sale is listed as \$886, then on the actual return, that figure appears actually, in two parts, as \$788 and \$98.

Mr. NORTON. That's right.

Mr. CHERTOFF. Now does this allow you to ascertain that there were two transactions that Mr. Clinton was involved in? One was the sale of 5 acres of land to which he reported a profit of about \$2,150, and then there was an additional sale of 15 acres of land to which he reported a profit of \$886, and then he deferred an addi-

tional \$5,500 in profit which presumably should have been paid in future tax years?

Mr. NORTON. That's right.

Mr. CHERTOFF. Do you know whether that \$5,500 of deferred gain ever was reported in any future returns or taken as income in future returns?

Mr. NORTON. I can only speak up through 1983, but if my memory serves me right, there was one other year, 1980, I believe it was, that some of the gain was reported.

Mr. CHERTOFF. Do you remember how much?

Mr. NORTON. There was no gain in 1979, 1981, 1982, or 1983 years reported.

Mr. CHERTOFF. So do you know whether the \$5,500 was ever reported in its entirety?

Mr. NORTON. I have no idea.

Mr. CHERTOFF. It certainly wasn't reported in its entirety during the years that you were responsible for the tax returns?

Mr. NORTON. That's right.

Mr. CHERTOFF. Now still focusing on this issue, we went back and actually got the underlying agreement with respect to this set of transactions. And I want to put before you something that's been marked as LP 1547. It is a purchaser's agreement for a Division of Rolling Manor.

Mr. NORTON. I have it.

Mr. CHERTOFF. Have you seen this before?

Mr. NORTON. No, sir.

Mr. CHERTOFF. This document indicates that Mr. Clinton had, in fact, purchased from Rolling Manor some property for \$11,400, and a portion of that property is the 5 acres as to which he reported the sale in 1978, and the balance of the property is the property that later became part of the installment sale. Mr. James, have you ever seen this document before?

Mr. JAMES. As I stated in my deposition, sir, I don't recall seeing it, but I was doing the books and records for Rolling Manor, so there is a possibility I could have.

Mr. CHERTOFF. Rolling Manor was a Jim McDougal project?

Mr. JAMES. Yes, sir.

Mr. CHERTOFF. And that is Mr. McDougal's signature on the bottom of this purchase agreement?

Mr. JAMES. It appears to be.

Mr. CHERTOFF. It is Susan Henley McDougal's signature on the bottom of the purchase agreement?

Mr. JAMES. Yes, sir, it appears to be.

Mr. CHERTOFF. And the purchaser on the agreement is William Clinton?

Mr. JAMES. That's correct.

Mr. CHERTOFF. Would you agree with me that, putting aside your memory, this agreement makes it perfectly clear that on the 25th of January, 1977, there was an agreement to purchase property for \$11,400 from Rolling Manor?

Mr. JAMES. Yes, sir, that's a purchase agreement for that.

Mr. CHERTOFF. Then we can see from the tax return that ultimately this property was sold by Mr. Clinton, 5 acres of it in a sin-

gle sale in 1977, and the balance in subsequent installments. You would agree with that, right?

Mr. JAMES. Yes, sir, according to the documents given me.

Mr. CHERTOFF. Now what puzzles me is this. It seems perfectly clear from the documents that the prior investment relationship between Mr. McDougal and Mr. Clinton involved an investment or purchase of 20 acres of property for over \$11,000. The President has consistently stated that, in fact, his prior investment experience with Mr. McDougal was much less than that, was much more modest.

For example, in his interrogatories for the Resolution Trust Corporation, which were pursuant to an order of February 4, 1994, it starts at Bates Number 0281 and in particular, I am interested in pages 282 and 283. We will get that to you.

Here the President was asked to answer, under oath, about his knowledge as of August 1978, of Jim McDougal's experience in real estate development, including everything he knew or did with Jim McDougal. And the President answered some general things about his knowledge, indicating he hadn't heard about any of the entities except Rolling Manor, and then he said:

As reported on our 1978 tax return, a 5-acre parcel of land was sold on May 17, 1978, for \$5,000, resulting in a capital gain of \$2,150. To the best of my recollection, this was a real estate investment I had had with Jim McDougal, and, while small, it was a profitable one. This experience confirmed my impression that he was capable of putting together successful real estate ventures.

Mr. Norton, do you know why the President, in his response under oath, failed to mention that there had been a second part of this investment for 15 additional acres that resulted in a profit of an additional \$5,500?

Mr. NORTON. I have no knowledge of what he's testified to.

Mr. CHERTOFF. You would agree with me that if you look at the purchase agreement and the tax records, including specifically the tax return which the President makes mention of in his interrogatories, it makes it quite clear that there was a second investment or second part of this investment with McDougal that involved a larger piece of property and a larger profit?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. So the President's answer here is incomplete?

Mr. NORTON. It appears to be.

Mr. CHERTOFF. I think that makes the point. So what you're telling us, Mr. Norton, is that at least during the period of time that you were responsible for handling the tax returns, you were not aware that the \$5,500 profit that had been deferred was ever fully taken as income and had tax paid on it?

Mr. NORTON. That's right.

Mr. CHERTOFF. Of course, you can't speak for whether that happened after 1983 when you stopped doing the tax returns?

Mr. NORTON. That's right.

Mr. CHERTOFF. I take it also that the President or the then-Governor Clinton and Mrs. Clinton never reported to you that they had a default by the purchaser and that they wanted to take a loss of some kind?

Mr. NORTON. I don't have my files to review. I don't remember ever discussing that.

Mr. CHERTOFF. Who did you mainly deal with on the tax issue for the Clintons? Was it Mr. Clinton or Mrs. Clinton?

Mr. NORTON. Both.

Mr. CHERTOFF. I want to bring you back again, Mr. Norton, to this initial introduction you had to the Whitewater investment. Your understanding was, at the time that you had the original discussion or discussions with Mr. Clinton concerning the tax effect of this investment, that Mr. Clinton was looking for some way to use these deductions to offset income that he had made in other investments?

Mr. NORTON. That really was not discussed in the way you have asked the question.

Mr. CHERTOFF. Well, was it discussed in some other way?

Mr. NORTON. Actually, I think I brought it up in that meeting by asking if the stockholders intended to take any startup losses that were incurred by the development.

Mr. CHERTOFF. That's what led to the discussion which ended when Mr. Clinton took you outside and said to back off?

Mr. NORTON. That's exactly right.

Mr. CHERTOFF. But I still want to ask you, was it your impression during the course of the discussion that one of the reasons that there was interest in taking these deductions as quickly as possible, even though the investors weren't pulling money out of their pockets to put in the investment, was because they wanted to offset income realized from some other sources?

Mr. NORTON. I think it's fair that I assumed that at the meeting.

Mr. CHERTOFF. Did you know from your discussions with Mr. Clinton on other occasions relating to this tax year, that there was income the Clintons had received from an investment that they'd made unrelated to Whitewater that they were very interested in finding some deductions to offset or to lower the amount of tax on?

Mr. NORTON. I don't remember any discussion like that with the Clintons.

Mr. CHERTOFF. You then continued to prepare the tax returns for the Clintons after the 1978 return. I want to direct your attention to the 1980 tax year. Did you become aware that in 1980, Mr. McDougal had paid off the \$20,000 initial downpayment loan about which we just talked about from the Union National Bank, that's Mr. Denton's bank?

Mr. NORTON. I saw information related to that transaction when I gave my deposition. That's the first time I've seen it.

Mr. CHERTOFF. So you did not know in 1980 that that initial loan, which Mr. Clinton had arranged to get from Union National Bank for the downpayment on the Whitewater investment, had been paid off by Mr. McDougal using money from a loan that Mr. McDougal had taken out under his own name in order to pay that loan off?

Mr. NORTON. I have no memory of that transaction.

Mr. CHERTOFF. You do not remember being told about it by the Clintons?

Mr. NORTON. No, I don't.

Mr. CHERTOFF. Let me ask you this then, from the standpoint of your knowledge of the tax laws. If Mr. McDougal borrowed money in his own name and used it to pay off a loan to which the Clintons

were jointly liable, essentially erasing the liability for the Clintons, would that constitute income to the Clintons?

Mr. NORTON. The answer isn't a simple, yes or no. I mean, that is one of the potential answers. If there was an obligation created by the Clintons to McDougal, then there would be no income. If McDougal was repaying an obligation to the Clintons by paying off that loan, there would be no income. But that could be one of the answers.

Mr. CHERTOFF. You would agree with me that that's precisely the kind of event that should have been brought to your attention in 1980 by the Clintons so you could make a determination about whether they had tax that they were obliged to pay for the erasing of that loan?

Mr. NORTON. I think that's a logical assumption, yes.

Mr. CHERTOFF. Yet your recollection, as best as you can give it today, is that they did not bring this to your attention?

Mr. NORTON. That is my recollection today. And that was a long time ago.

Mr. CHERTOFF. Mr. Chairman, I think this is a convenient time to stop because I see the yellow light is on.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. When was this, Mr. Norton?

Mr. NORTON. When was what?

Senator SARBANES. This thing that Mr. Chertoff was asking you about. You said that was a long time ago. We are talking what, 16 or 17 years ago?

Mr. NORTON. In 1978. Well, the transaction he asked me about on the repayment of the loan was the 1980 transaction.

Senator SARBANES. So that was 16 years ago?

Mr. NORTON. That's right, sir.

Senator SARBANES. All right.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. With respect to the analysis Mr. Chertoff performed concerning a comparison of President Clinton's deposition testimony and that of Mr. Denton and Mr. Berry, I guess we will await to see whether the Independent Counsel having that information puts on those witnesses in rebuttal and, if so, what the outcome is. My suspicion is that this is so arcane and unimportant that they will not do so, but we'll see.

In order to put it into proper context, indeed, President Clinton's deposition preceded the testimony, both in deposition and in hearing of Mr. Denton, if there's any confusion about that raised by the premise of Mr. Chertoff's question. And to put into further context the question of how this \$20,000 loan was arranged back in 1978, 18 years ago, we have Mr. Berry's deposition on May 10, 1996, at page 18, Mr. Chairman.

Answer: Are you aware that we had a program at Union National Bank where we routinely providing unsecured loans to individual accounts? That marketing device was called "prestige banking." We identified young professionals and offered to them a \$10,000 line of unsecured credit if they would open their checking accounts with us.

Mr. Clinton, at that time, was 18 years younger and I guess would qualify as a young professional.

Question: So, what you are telling me, the bank had a policy of extending \$10,000 of credit to those young professionals who opened new accounts?

Answer: Yes. Many banks had that at that time that kind of a program. It generically had different names for it.

Question: Was this \$20,000 loan to Bill Clinton and Jim McDougal made as part of that program you have just described?

Answer: No. It was not unusual. The loan was made to Mr. Clinton and Mrs. Clinton. I had solicited their personal banking business and we had their personal accounts. And when they had a credit need, we were—I was the one that introduced them, as I recall, to Mr. Denton.

Mr. McDougal was already a customer of the bank when that loan was made; a loan customer, too.

So all of this mystery about the \$20,000 loan in 1978 is quite readily described in the testimony of Mr. Paul Berry as being quite straightforward, open, part of their policy, and in no way, shape or form sinister.

Mr. Cole.

Mr. COLE. Thank you, Mr. Ben-Veniste.

Mr. NORTON, could we go back to the meeting that you recall with Mr. Clinton and Mr. McDougal. Who, if you recall, sir, did the talking at that meeting?

Mr. NORTON. Principally Mr. McDougal, and this accountant that was there did some, and I did some.

Mr. COLE. Who explained the investment and the accounting and tax plans of the investment?

Mr. NORTON. A combination of McDougal and this accountant.

Mr. COLE. Did Mr. Clinton speak or provide any explanation of the investment at the meeting?

Mr. NORTON. I don't remember him speaking to that issue.

Mr. COLE. If I understand your testimony correctly, sir, the concern that you raised at the meeting stemmed from the use or the proposed use of an S corporation with regard to the Whitewater investment?

Mr. NORTON. Yes.

Mr. COLE. Your concern was that because of a problem with tax basis, the individuals might not be able to take the tax deductions for the interest on the land acquisition loans if an S corporation was used?

Mr. NORTON. Yes, sir.

Mr. COLE. Do you know, sir, from your subsequent experience preparing the Clintons' tax returns, whether or not, in fact, an S corporation was used by Whitewater or S corporation filing status was elected by Whitewater Development Corporation?

Mr. NORTON. From the information I received from the Clintons, S corporation status was never elected in Whitewater.

Mr. COLE. Mr. James, you were the accountant for Whitewater during the time period and also the tax preparer, were you not, sir?

Mr. JAMES. That's correct.

Mr. COLE. Do you have any knowledge as to whether or not an S corporation filing status was used by Whitewater?

Mr. JAMES. Sir, as I recall, from my deposition and documents shown me, there was an application made for it. By the IRS's own rules, they could not be a subchapter S corporation.

Mr. COLE. So an S corporation filing status was never used by Whitewater?

Mr. JAMES. That's correct.

Mr. COLE. Mr. Norton, in that case, would the problem about which you were concerned have arisen, since an S corporation was not used?

Mr. NORTON. It would not have arisen.

Mr. COLE. So the problem that you were concerned about never really took place?

Mr. NORTON. It never took place.

Mr. COLE. But I take it you don't know whether Mr. McDougal and the other person or accountant who attended the meeting heeded your advice, or for other reasons came to their own conclusion not to use an S corporation?

Mr. NORTON. I had no follow-up conversations with McDougal on the issue, and I don't know what they did.

Mr. COLE. But you do know that an S corporation was not used; and therefore, the problem about which you were concerned did not arise?

Mr. NORTON. That's right.

Mr. COLE. Then moving forward to the issue of the 1978 and 1979 tax returns that you were shown a few moments ago, and the deferred capital gains on the installment sale of the Rolling Manor property. It is my understanding that in that kind of a land sale transaction, where the property is sold on an installment basis, the seller of the property, which in this case would have been Mr. Clinton, reports the income in subsequent years as the payments are actually made by the installment purchaser?

Mr. NORTON. That's correct.

Mr. COLE. In layman's terms, is that a correct description?

Mr. NORTON. That's correct.

Mr. COLE. In that situation, the seller has tax liability in subsequent years only if, in fact, the payments are made by the installment purchaser. Is that correct?

Mr. NORTON. That's correct.

Mr. COLE. Do you have any knowledge, sir, as to whether or not those payments were, in fact, made on the Rolling Manor property?

Mr. NORTON. Other than 1980, when there was a gain reported, I have no knowledge.

Mr. COLE. So absent evidence as to whether or not the payments were actually made, one can't come to any conclusion as to whether or not taxable income should have been reported?

Mr. NORTON. That's right.

Mr. COLE. Is that correct?

Mr. NORTON. That's correct.

Mr. COLE. Mr. James, do you recall, sitting here today, 18 years later, whether or not, on this particular piece of Rolling Manor property, the purchaser actually performed under the installment sales contract?

Mr. JAMES. I have no recollection. I can't recall, sir.

Mr. COLE. So you don't know one way or another?

Mr. JAMES. No, sir, I don't.

Mr. COLE. Well, let's step back a bit, both of you gentlemen, and look at this Whitewater investment and the accounting and tax treatment of the investment. If we really go back to basics and look at this, if I am understanding the issue correctly, there are two things that we need to look at. One would be whether income was

realized from the investment and should have been reported on the tax returns, and then the other issue would be whether deductions relating to the investment were properly reported on the tax returns. Is that a fair summary of the issues we are dealing with, Mr. Norton?

Mr. NORTON. Yes, sir.

Mr. COLE. Do you agree with that, Mr. James?

Mr. JAMES. Yes, sir.

Mr. COLE. Let's take these one at a time, and first look at the income and then we will look at the deductions. On the income, Mr. James, the property that came to be known as Whitewater was purchased in 1978 by the Clintons and McDougals, is that your recollection, sir?

Mr. JAMES. Yes, sir.

Mr. COLE. At the time of the initial purchase, a corporation was not formed; is that correct?

Mr. JAMES. That's correct.

Mr. COLE. Do you recall that the corporation was formed about 1 year later in 1979?

Mr. JAMES. Yes, sir.

Mr. COLE. At that time, the records that have been produced to the Special Committee indicate that the Whitewater land was transferred by the individuals to the corporation. Is that consistent with your recollection?

Mr. JAMES. Yes, sir.

Mr. COLE. Let me ask both of you gentlemen, did that event, in and of itself, being the transfer of the land from the individuals to the corporation, and I understand the land was transferred to the corporation subject to the bank debt that had been used to acquire the land, did that event, in and of itself, create any tax liability for the individuals, Mr. James, to your knowledge?

Mr. JAMES. At this time, I do not believe so, sir. As I recall, there was not.

Mr. COLE. Mr. Norton, and I am not here fishing for a technical explanation about Section 351 of the Internal Revenue Code or something like that, but in simple non-tax professional terms, did the transfer of the land, in and of itself, result in a tax liability for the individual shareholders in the corporation?

Mr. NORTON. There wasn't a gain reported in that year, and as far as I know, there wouldn't have been one. There wasn't a gain.

Mr. COLE. As far as you know, there would have been no reason to report a gain in that year?

Mr. NORTON. That's right.

Mr. COLE. You prepared the tax returns for that year and 2 or 3 years subsequent; is that correct?

Mr. NORTON. The individual returns of the Clintons', yes.

Mr. COLE. You did not report any gains?

Mr. NORTON. No.

Mr. COLE. Now isn't this kind of transaction, where individuals form a corporation and place assets that they personally own in a corporation, something that happens all the time across the country, whether we are talking about someone putting land in a corporation or a convenience store, gasoline station, whatever. People do that all the time, do they not?

Mr. NORTON. It's a common transaction.

Mr. COLE. And when people do that, they normally don't incur any tax liability?

Mr. NORTON. That's right.

Mr. COLE. Well, let's take it then to the next step from a tax perspective. Once a corporation is formed, and the property is put in the corporation, and in this case the property was land and it was being held for resale by the corporation, from a tax perspective, the way this works is, at a later time, if the land is sold for a profit, then the corporation incurs a tax liability; correct, Mr. James?

Mr. JAMES. As I understand it, yes, sir.

Mr. COLE. That's the tax liability of the corporation as opposed to the individual shareholders of the corporation?

Mr. JAMES. Yes, sir.

Mr. COLE. I guess we should pause for a moment here. There's a technicality, I believe. If the land is sold on an installment basis, which is to say, the purchaser of the land doesn't pay the full purchase price at the time of the transaction, but instead agrees to make payments over a period of time, then in that case, it is reported as an installment sale and the income is reported in subsequent years as the payments are actually made; is that correct, gentlemen?

Mr. NORTON. That's correct.

Mr. JAMES. Yes, sir.

Mr. COLE. In fact, something like that is what happened with the Rolling Manor transaction that we'll discuss later. But then following the chain of events to the next step, later if the corporation sells land for a profit and realizes a gain, it can then distribute that gain to the shareholders through a dividend or otherwise. And it's at that point that the individual shareholders in a corporation incur a tax liability. Am I correct about that?

Mr. NORTON. That's right.

Mr. COLE. Similarly, if the corporation, rather than distributing the income from its operations, retains that income invested in the corporation building roads on the land, improvements, whatever, the retention of that profit does not create any liability for the individual shareholders; is that correct?

Mr. NORTON. That's right.

Mr. COLE. Then finally, if in a subsequent time, the shareholders either sell the corporation or sell their shares in the corporation at a profit, then they would incur a capital gain, and that capital gain would reflect the profits presumably of the operation of the corporation?

Mr. NORTON. That's right.

Mr. COLE. Now with Whitewater, that didn't happen, did it, gentlemen? Whitewater didn't make any money, to your knowledge?

Mr. JAMES. No, sir.

Mr. COLE. You were the accountant to Whitewater for at least 5 or 6 years, I believe, Mr. James?

Mr. JAMES. That's correct.

Mr. COLE. During those years, did Whitewater realize any profits from its operations?

Mr. JAMES. Not that I recall, sir.

Mr. COLE. In fact, it lost money, I believe, did it not?

Mr. JAMES. To the best of my recollection, yes, sir.

Mr. COLE. Is that consistent with your knowledge, Mr. Norton, and I understand you were not the tax preparer for Whitewater, but you did prepare the tax returns for two of the investors in Whitewater?

Mr. NORTON. I am only aware of the transactions that affected their individual return, and I have no knowledge whether Whitewater made or lost money.

Mr. COLE. You do know, however, that no dividends from Whitewater or distribution of income from Whitewater were reported to you by the Clintons in connection with the preparation of their tax returns?

Mr. NORTON. That's right.

Mr. COLE. Finally, Mr. Norton, the Clintons' 1979 tax return, which would have been the year after the Whitewater property was purchased and the year in which the Corporation of Whitewater Development was formed, that tax return was audited by the IRS, was it not?

Mr. NORTON. That's right.

Mr. COLE. Did the IRS challenge or disallow any of the items in the Clintons' return?

Mr. NORTON. No, they did not.

Mr. COLE. So to summarize, when we started this line of questioning, I told you that I was going to focus first on income, and then turn to question of deductions, as far as income from Whitewater is concerned, there was none to your knowledge?

Mr. NORTON. To my knowledge, there was none.

Mr. COLE. To your knowledge, Mr. James?

Mr. JAMES. There was none.

Mr. COLE. Let's turn to the other side of the tax coin, and look at tax deductions. Because when you are preparing a tax return, you are first concerned with income and then you are concerned with the propriety of your deductions. Is that a fair summary?

Mr. NORTON. Yes.

Mr. JAMES. Yes.

Mr. COLE. In terms of deductions, when the Clintons and the McDougals purchased the Whitewater property in 1978, they individually borrowed money from two banks to purchase the property, to finance the purchase of the property. Is that what you recall occurred, Mr. James?

Mr. JAMES. Well, yes, sir, by documents shown me. But I didn't have anything to do with it when they first bought the land.

Mr. COLE. We have the documents. I won't take time to show you the documents now but we have the bank notes that were executed. In the case of the bank in Flippin, Arkansas, Citizens Bank & Trust, Mr. and Mrs. Clinton and Mr. and Mrs. McDougal personally executed those loan documents. And in the case of the loan from Union Bank in Little Rock, which there was some reference made to earlier, Mr. Clinton and Mr. McDougal personally executed those loan documents.

Now at this time, 1978, 1979, 1980, 1981, in this period, did the IRS permit individuals to deduct interest payments of all kinds, irrespective of who the lender was or what the purpose of the loan was, Mr. Norton?

Mr. NORTON. Yes, sir.

Mr. COLE. So in other words, if a taxpayer at that time had made interest payments, whether it was on a department store charge account or a Visa card or a bank loan to buy a house or a bank loan to buy investment property, the tax code in effect at that time permitted the taxpayer to deduct those interest charges on their individual returns?

Mr. NORTON. At that time, yes, sir.

Mr. COLE. So if the Clintons were personally liable on the Whitewater loans and they made payments out of their pocket, wrote checks for interest, they could have deducted those interest payments on their returns. Is that correct?

Mr. NORTON. Yes, sir.

Mr. COLE. Is that your understanding, and we have the returns here, we can show them to you, but is it your recollection that the interest deductions that you were provided by the Clintons were properly deductible at the time?

Mr. NORTON. Yes, sir.

Mr. COLE. Did they give you any checks or other evidence of the deductions that you recall?

Mr. NORTON. I don't recall any checks.

Mr. COLE. I understand it has been a long time ago. Well, let me ask you this, because this is an issue that has been raised with respect to some of these Whitewater interest payments. If the Clintons had written a check to the bank directly for the interest, there's no question that that would have been a proper interest deduction at this time under the tax code?

Mr. NORTON. Yes, sir.

Mr. COLE. If the Clintons, if Mr. McDougal or Whitewater had paid the interest, had written the check to the bank, and then the Clintons had reimbursed Mr. McDougal or the corporation with a check, is there any reason that the Clintons would not be able to have deducted that payment, so long as it was for interest?

Mr. NORTON. For their share of the interest they could have deducted it, yes.

Mr. COLE. And so even if they wrote a check to another one of Mr. McDougal's companies, so long as the purpose of that check was to pay interest, then it would have properly been deductible under the tax code?

Mr. NORTON. Yes, sir.

Mr. COLE. At the time, and I realize the tax laws have changed since that time, have they not?

Mr. NORTON. Yes, sir, substantially.

Mr. COLE. There was a phase out period in which you could deduct certain portions of your interest, and now the tax law is that other than home mortgage interest and perhaps a few other exceptions, interest is generally no longer deductible?

Mr. NORTON. That's right.

Mr. COLE. But at the time these transactions took place, there was nothing unusual, improper, or even questionable about the deductions the Clintons took for Whitewater interest?

Mr. NORTON. That's right.

Mr. COLE. In fact, people all across the country were doing it on all kinds of investments and all kinds of interest obligations?

Mr. NORTON. I'm sure they were.

Mr. COLE. Let me ask you this, not to further complicate things, but it would be a problem, would it not, if both the Clintons and the corporation took a deduction for the same interest payment. That would not have been permitted?

Mr. NORTON. That would be correct.

Mr. COLE. We have documents that indicate that in December 1993, the Clintons made a correction to their 1984 and 1985 tax returns because they learned, in the course of subsequent review of this Whitewater investment, that they had inadvertently taken a deduction for interest that, in fact, had been paid by Whitewater. Do you have any knowledge of that event, Mr. Norton?

Mr. NORTON. No, sir. That was subsequent to the years that I prepared.

Mr. COLE. Were you ever contacted by the Clintons or any representative of the Clintons regarding a correction or amendment to the Clintons' tax returns?

Mr. NORTON. I was, yes, sir.

Mr. COLE. Who contacted you, sir?

Mr. NORTON. David Kendall.

Mr. COLE. Did you know who Mr. Kendall was?

Mr. NORTON. I did.

Mr. COLE. Mr. Kendall is the personal attorney for the Clintons, is he not?

Mr. NORTON. Yes, sir.

Mr. COLE. Did Mr. Kendall say anything to you about correcting prior years tax returns in the course of that discussion?

Mr. NORTON. Yes, sir.

Mr. COLE. What do you recall that he told you?

Mr. NORTON. That they were correcting the 1979 tax return for some commodity transactions that had not been previously reflected.

Mr. COLE. Did he discuss with you any changes to the 1984, 1985 tax returns? Or did he say anything about a correction related to Whitewater?

Mr. NORTON. In my deposition, I said I thought he did. And I went back and reviewed the correspondence I had with him, and there was some mention in the correspondence of interest deductions, but I have no idea now whether that had to do with correcting interest deductions or Whitewater or not.

Mr. COLE. In fact, the Clintons did correct their 1984 and 1985 tax returns in December 1993, and the reason I raise it with you, sir, is that you prepared those returns, did you not?

Mr. NORTON. No, not 1984 and 1985.

Mr. COLE. You did not?

Mr. NORTON. 1983 was the last year.

Mr. COLE. 1983 was the last year that you prepared the returns, so you don't have any knowledge of the 1984, 1985 returns?

Mr. NORTON. No, sir.

Mr. COLE. For the years that you prepared the returns, Mr. Norton, including the 1979 return that you mentioned, did you have any reason to believe that the information that you were providing to the Internal Revenue Service was not correct?

Mr. NORTON. I had no reason to believe that it was not correct. I had reason to believe that it was correct because it was the information supplied to me by the Clintons.

Mr. COLE. You did everything within your professional ability to file the returns, to report income and deductions properly and file accurate returns with the Internal Revenue Service?

Mr. NORTON. Yes, sir.

Mr. COLE. Now did the Clintons ever indicate to you that they intended to use the Whitewater investment to improperly claim some tax benefit or to avoid some tax liability?

Mr. NORTON. No, sir.

Mr. COLE. I'm now clear on this, you prepared their tax returns between 1977 and 1983?

Mr. NORTON. That's right.

Mr. COLE. That would have been the first 5 years of the Whitewater investment, roughly the 1978 to 1983 period?

Mr. NORTON. That's right.

Mr. COLE. Other than the one meeting that you have already described that you attended with Mr. Clinton and Mr. McDougal, did you have any discussions with either of the Clintons about obtaining tax benefits for the Whitewater investment?

Mr. NORTON. No, sir.

Mr. COLE. They never indicated they were trying to maximize the tax deductions from Whitewater or use Whitewater to offset their income or anything to that effect?

Mr. NORTON. I have no memory of discussions like that.

Mr. COLE. Did they ever express any particular interest or focus or concern on the Whitewater investment in the years that you prepared their tax returns?

Mr. NORTON. No, sir.

Mr. COLE. Mr. James, you were the tax preparer and the accountant for Whitewater, the corporation, during this period, were you not?

Mr. JAMES. That's correct.

Mr. COLE. What role did the Clintons play in the Whitewater investment by your observation during this period?

Mr. JAMES. As I said in my deposition, I never talked to the Clintons about Whitewater.

Mr. COLE. So you have no recollection of talking to either of the Clintons about Whitewater during the period that you were both its accountant and tax preparer?

Mr. JAMES. That's correct.

Mr. COLE. Did you send the Clintons copies of the Whitewater tax returns to your recollection?

Mr. JAMES. Mr. Cole, as I stated in my deposition, I always gave one retained copy, and I gave it to Mr. McDougal. Whether I sent the Clintons one or not, I cannot remember but I always did furnish someone with the corporation a retained copy.

Mr. COLE. What was your practice with regard to companies that Mr. McDougal operated for which you prepared tax returns? Did you normally provide a copy of the return to Mr. McDougal?

Mr. JAMES. Yes, sir.

Mr. COLE. So if there were other investors in those companies, would you normally provide the returns to those investors?

Mr. JAMES. Mr. Cole, I can't remember doing that. Like I say, I might have sent them, but I don't recall.

Mr. COLE. But you do not have any memory of sending the Clintons—

Mr. JAMES. No, sir, I don't.

Mr. COLE. —copies of the Whitewater tax returns. And during the time that you were preparing the Whitewater tax returns, did you ever have occasion to consult with the Clintons, ask their advice, obtain information from them about the tax treatment of the corporation?

Mr. JAMES. No, sir.

Mr. COLE. Who, by your observation, was managing the Whitewater investment at that time?

Mr. JAMES. Mr. McDougal.

Mr. COLE. Did the Clintons play any managerial role at all to your observation?

Mr. JAMES. Not to my knowledge, sir.

Mr. COLE. Would it be fair then, Mr. James, to describe the Clintons as passive investors in the Whitewater enterprise?

Mr. JAMES. If, by passive, you mean that they had no active role that I knew about, yes, sir.

Mr. COLE. During the time period that we're talking about, did you ever have any occasion to meet with Mr. Clinton or Mrs. Clinton? Let's take them one at a time. Mr. Clinton, first. About Whitewater or otherwise?

Mr. JAMES. No, sir. You're asking me concerning Whitewater?

Mr. COLE. Let's start with concerning Whitewater.

Mr. JAMES. No, sir.

Mr. COLE. So you had no meetings with Mr. Clinton concerning Whitewater?

Mr. JAMES. No, sir.

Mr. COLE. Did you have any other meetings with Mr. Clinton during that period? I believe in your deposition, you said you ran into him in an airport once and introduced yourself to him?

Mr. JAMES. Yes, sir, that's correct. Only twice.

Mr. COLE. He was not someone that you had dealings with?

Mr. JAMES. No, sir.

Mr. COLE. Your dealings were with Mr. McDougal or, perhaps, Mrs. McDougal?

Mr. JAMES. That's the only two, yes, sir.

Mr. COLE. What about Mrs. Clinton, did she play any role in the Whitewater, in managing the Whitewater investment during the period you were involved in it?

Mr. JAMES. Not while I was involved, sir.

Mr. COLE. Did you have any meetings with Mrs. Clinton about Whitewater?

Mr. JAMES. In my deposition, I stated that I only met her twice, once I was introduced to her, and then when I took my records to her, when they were trying to get after Mr. McDougal and we had stopped doing business.

Mr. COLE. When did you stop doing business with McDougal?

Mr. JAMES. Sir, as I stated, I can't recall the exact year, but I believe 1985 or 1986 was the last year I did anything for him.

Mr. COLE. So the mid-1980's?

Mr. JAMES. Yes, sir.

Mr. COLE. Did there come a time subsequent to that where Mr. Clinton contacted you and asked for Whitewater tax information?

Mr. JAMES. Well, according to my deposition, Mr. Clinton called me at home one night and was concerned because things had not been filed, and I explained to him that I didn't have any of those records, and I told him that I would try to help, try to find Mr. McDougal and see what was going on. But I wasn't able to do that.

Mr. COLE. This was a time when Mr. McDougal had left the Little Rock area and you were no longer dealing with him regularly?

Mr. JAMES. That's correct.

Mr. COLE. We asked you this in your deposition, and I think your answer was, you really can't recall the year, but do you have some sense of the time when this occurred?

Mr. JAMES. When I met?

Mr. COLE. When Mr. Clinton called you and asked if you could gather some tax records?

Mr. JAMES. No, sir, I cannot recall the year or the time.

Mr. COLE. And the purpose of Mr. Clinton's call was to obtain information so that the Whitewater tax returns could be filed?

Mr. JAMES. Yes, sir.

Mr. COLE. You were no longer filing the Whitewater tax returns at that time?

Mr. JAMES. No, sir.

Mr. COLE. And were you able to obtain any information for Mr. Clinton?

Mr. JAMES. As I recall, I wasn't able to get ahold of McDougal.

Mr. COLE. Where was Mr. McDougal at this time, do you know?

Mr. JAMES. No, sir. Again, that would depend on the timeframe. I know he was out of the State for awhile, and then he was also sick, so I really don't know where he was.

Mr. COLE. This would have been during the time in the mid- to late-1980's when Mr. McDougal was sick and perhaps out of State?

Mr. JAMES. As I recall, that's correct, sir.

Mr. COLE. With regard to Mrs. Clinton, did you ever have any contact with her regarding Whitewater?

Mr. JAMES. The only time was when I took my records to her office, and here again, as I told you, I don't remember if I met her once when I took the records up there, or when I picked them up, my personal files.

Mr. COLE. When was that? Was it during the 1992 Presidential Campaign?

Mr. JAMES. No, sir, it was before then.

Mr. COLE. It was before the campaign?

Mr. JAMES. Yes, sir.

Mr. COLE. Mr. Norton, did you have any contact with Mrs. Clinton during the 1992 campaign relating to tax matters?

Mr. NORTON. She called me and asked me if I could locate our old tax files from when we were preparing, Foster & Company was preparing their tax returns.

Mr. COLE. Were you able to locate those records for her?

Mr. NORTON. No.

Mr. COLE. Other than that, did you have any contact with her?

Mr. NORTON. Well, she called back several weeks later and asked if I had been able to locate anything, and I said no, and that was really the only two contacts I had with her during the campaign.

Mr. COLE. Did she indicate why she needed the tax returns?

Mr. NORTON. No.

Mr. COLE. Did you know at that time that Whitewater had become an issue in the campaign?

Mr. NORTON. Yes.

Mr. COLE. I take it you could probably figure out why she needed the tax returns?

Mr. NORTON. Yes.

Mr. COLE. She was your client, and she had a right to get them if she wanted them?

Mr. NORTON. I'm sure she did.

Mr. COLE. My time's expired. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Now, Mr. Norton, about 10 minutes ago, Mr. Cole asked you about a conversation you had in 1993, I guess it was, or 1992 with Mr. Kendall concerning unreported gains on commodities trading by Mrs. Clinton in 1979. Would you tell us about that?

Mr. NORTON. The conversation I had with Mr. Kendall really he asked me about the tax exam, in my memory, of the tax exam on the 1979 year. He sent me some information, a copy of the IRS's letter setting up the tax exam and information the IRS had requested. He had also sent me a computer printout from the IRS's records indicating the tax activity for that year, and that there had been an exam, and the results of the exam.

I helped him as best I could, I really had very little memory of that tax exam. But he told me that they had hired some accountants, the Clintons, the campaign, whoever had hired some accountants to look at the transactions in 1979 and discovered that there were I believe two transactions that were not reported, two commodity transactions that were not reported on their return. He said they were going to file an amended return on that, and wanted to inform me of that since I had prepared that 1979 return, and he asked me if I had a problem with that, and I said no.

Mr. CHERTOFF. When was this call with Mr. Kendall, 1993?

Mr. NORTON. I could look at the file. I don't remember the year.

Mr. CHERTOFF. Was it after Mr. Clinton had become President?

Mr. NORTON. Can I just look?

Mr. CHERTOFF. Sure. Take a moment to look.

Mr. NORTON. February 1994.

Mr. CHERTOFF. February 1994. So to put that in perspective, that is after Mr. Fiske was appointed Special Counsel, you had a conversation with Mr. Kendall in which he indicated to you that he had discovered that the Clintons had made profits on commodities transactions which they had not reported on the tax returns?

Mr. NORTON. Actually, it was a profit and a loss. There was some of each.

Mr. CHERTOFF. So there were two transactions and commodities that had not been reported on the returns?

Mr. NORTON. That's—yes, sir.

Mr. CHERTOFF. Did he tell you what the dimensions of the profit and loss were?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. What were they?

Mr. NORTON. Give me a second and I will tell you. There was a short-term capital gain of \$6,498, and a short-term capital loss of \$80 that was not reported.

Mr. CHERTOFF. Well, if you net it out, there was about a \$6,000 profit that was not reported?

Mr. NORTON. That's right. And it appears as if the loss was in the 1979 return, should have been in the 1979 return, and the gain should have been in the 1980 return.

Mr. CHERTOFF. When you say the gain should have been in the 1980 return, do you mean that Mrs. Clinton was doing commodities trading in 1980?

Mr. NORTON. According to this information, yes.

Mr. CHERTOFF. That there was \$6,000-plus of profits in 1980 that were not reported?

Mr. NORTON. That's right.

Mr. CHERTOFF. Did Mr. Kendall tell you why you had not been given this information by the Clintons?

Mr. NORTON. I'm not—I mean, he didn't tell me why the Clintons didn't give it to me. He stated that there was monthly statements provided by the brokerage firm, but that there was not a year-end summary of the activity provided by the brokerage firms to the Clintons.

Mr. CHERTOFF. When you did the tax returns for the Clintons in 1978 and 1979 when they also did a lot of commodities trading, did you work off the brokerage statements, or did the Clintons give you a piece of paper, or a summary of the profits?

Mr. NORTON. That's a long time ago—

Mr. CHERTOFF. I know. I am just asking you, in general?

Mr. NORTON. I vaguely remember year-end summary statements from the brokerage firms that gave the profit and loss to report.

Mr. CHERTOFF. I am going to ask that we show you a portion of the 1980 return, which I believe should be marked as Schedule D, that reflects a small amount of commodities' profits.

Mr. CHERTOFF. While we are locating that, let me move on to something else, but I am going to want to come back to this question of how it is that there was a significant profit in commodities trading that was not given to you to report to the IRS.

But let me come back to another issue of profit where there is a question about whether it was reported. This goes back to what Mr. Cole raised with respect to that installment sale, that 15-acre installment sale. Again, that is the piece of property, the portion of the deal that Mr. Clinton did with Mr. McDougal that was not mentioned in Mr. Clinton's interrogatory.

Oh, I'm sorry. Here it is. It is No. LP-682. It is the 1980 Schedule D. We are going to give it to you right now. I understand, Mr. Norton, and in fairness to you, for the record, you were totally captive to the client here. It is what the Clintons give you. You do not have an independent basis.

Mr. CHERTOFF. You did report some activity in commodities for 1980, a loss of \$449; a gain of \$130, for a total loss of \$319.

Mr. NORTON. I know the \$449 is a commodity transaction.

Mr. CHERTOFF. You are not sure what the \$130 is?

Mr. NORTON. I don't know what the \$130 is—no, wait. The \$130 is not—there is a schedule attached. It is not commodities.

Mr. CHERTOFF. OK. So the point is that the Clintons, in fact, specifically gave you information about the fact that there was some commodities' activity, but the information that they gave you indicated a loss of \$449 instead of a profit in excess of \$6,000. Is that fair to say?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. So it is not as if they just overlooked the commodities trading altogether that year; it is that they gave you the loss, but they didn't give you the profit.

Mr. NORTON. Yes.

Mr. CHERTOFF. Now let's go on to this other issue of profit. We have this installment sale on this other piece of property which Mr. Clinton bought from Mr. McDougal, which again he omitted to put in his interrogatory answers. Mr. Cole asked you whether it is correct that, in fact, the buyer of the property from Mr. Clinton on the installment sale never finished paying off the property, then obviously, Mr. Clinton would not have to report a profit, and I agree that that is correct. But you would agree with me that if, in fact, the purchaser had not paid off the balance of the installment sale, the Clintons would have been entitled to take a deduction. Because if they lost money, having bought the property from McDougal and then not getting the purchase price from the new purchaser, they would have taken a loss; right?

Mr. NORTON. It depends on whether they got the property back or not. If they got the property back, there would be no loss. If they did not get the property back, there would not be a loss.

Mr. CHERTOFF. Well, we have no evidence that they got the property back, or that they owned the property afterwards, or that they ever had another transaction in the property. So my question to you is: Did they ever tell you that there was a loss and that they wanted to take a deduction?

Mr. NORTON. I have no memory of that, sir.

Mr. CHERTOFF. I assume if they had told you, you would have put it on the return?

Mr. NORTON. I think I would have; yes, sir.

Mr. CHERTOFF. Let me move on to another issue. It is interesting that Mr. Cole brought up the issue of commodities, because it is in 1978, 1979, and 1980 that these—well, now we know it is 1980; we did not know that before, but in these 3 years there are the well-known commodities profits.

Also, these are the years in which the Clintons evidence an interest in getting some fast deductions from this Whitewater investment. There was a payment. I want to direct your attention to Schedule A for the 1978 return. It is LP659. You will see that it says, "Interest Expense, Great Southern Land Company, \$10,131." Do you see that?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. We all agree here that at that period of time payment of interest on a loan was tax deductible.

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. But you will also agree with me that you are only supposed to deduct interest that is due. If you prepay interest from

another year, a later year, you are not entitled to deduct it in the year you pay it; right?

Mr. NORTON. That's right.

Mr. CHERTOFF. That is because if you allow people to deduct a year in advance, they might be able to manipulate their deductions to offset income in a way that would be favorable to them and unfavorable to Uncle Sam; right?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. Now do you know whether, in fact, the \$10,131 in interest that was paid in 1978 was for interest that was due and owing in 1978?

Mr. NORTON. I don't know how to answer that question. I know that it was deducted, and it was given to me as a deductible by the Clintons.

Mr. CHERTOFF. So they just told you that it was interest that was due and owing and they had to pay?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. Have you subsequently learned—and when I say “subsequently,” I mean, very recently—that, in fact, most of that \$10,000-plus in interest was really for interest due in 1979?

Mr. NORTON. I have learned that in my deposition.

Mr. CHERTOFF. So that it was improper for the Clintons to tell you that was interest that was deductible in 1978? That was not a proper deduction?

Mr. NORTON. That's right.

Mr. CHERTOFF. The effect of that was, again, fitting in with the pattern we saw earlier, it accelerated the deduction. The Clintons got to take a deduction earlier than they otherwise would be able to take if they had done this according to Hoyle?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. Now let me move to 1980. I would like to show you Schedule A and B from 1980, LP 678. Here we have an interest expense to James McDougal of \$9,000. Again, you got that from the Clintons?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. They told you it was an interest expense?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. That they were paying back interest on a loan?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. The law at that time, as it is now, was that principal, repaying the principal of a loan is not deductible?

Mr. NORTON. That's right.

Mr. CHERTOFF. I mean, there is no question about that. Even I from my brief exposure to kind of baby tax in law school remember that. Did you know at the time, as we now know, because of the reconstruction of the records that, in fact, the \$9,000 payment was for principal?

Mr. NORTON. I did not know that.

Mr. CHERTOFF. Would you agree with me that it was improper to deduct a principal payment as an interest expense?

Mr. NORTON. I agree with that.

Mr. CHERTOFF. By the way, the source of my knowledge that this is principal comes from the Pillsbury Report. The accountants that worked for Pillsbury did an analysis and reconstructed the records.

I am not going to go through the whole arcana of the tax law, and I am not going to ask you about the 1984 and 1985 deductions which have been discussed publicly, and those were not on your watch, and I want to make it clear, Mr. Norton, you were always relying on what the Clintons told you, and you made your judgment based on what they told you?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. But just based on what we have seen in this last 15 minutes, there is \$6,000-plus of unreported profit in 1980 on commodities. There is some portion of \$10,000 of interest improperly taken in advance to accelerate the deduction. There is \$9,000 in interest that is taken as a deduction that is not deductible because it is the repayment of principal. There is at least a serious question about whether this installment, the profit on the installment sale of property was ever properly reported. That may be additional unreported income. We do know that the President never mentioned this transaction with McDougal on this 15 acres when he was asked about it in his interrogatories, or even, for that matter, when he testified about it as part of his trial in Little Rock.

So, I mean, based on what we have explored in terms of the record and your recollection, I take it that when you prepared the documents, and when you gave advice, you relied totally upon what Mr. and Mrs. Clinton told you?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. Any inaccuracies, or errors, or failures to report income, or taking wrong deductions, or not giving correct answers in interrogatories, that is not anything that you had anything to do with?

Mr. NORTON. Yes, sir.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let's go to the issue of Mr. Kendall's call to you and the corrective measures that were taken. Mr. Chertoff seemed to raise his eyebrows in surprise to hear your answer about the two items, the profit and the loss, the loss and the gain from 1980, for the 1980 return.

Indeed, a release was issued by Mr. Kendall, according to our records, in April 1994, more than 2 years ago, where all of this was set out in detail. It talks about, among other things, the 1978, 1979 return, and on page 3 in the first full paragraph of that 2-year-old release by the President's lawyer, he says:

In the analysis of the records by the Clintons' attorneys and accountant concluded over the weekend, it was determined that a small capital loss of \$80 from the Clintons' account was not reported on the 1979 return. It was also determined that a short-term capital gain of \$6,498 from the ACLI account was not reported on the 1990 return.

Senator SARBANES. 1980.

Mr. BEN-VENISTE. I'm sorry, the "1980 return." Then he goes on to say that:

Three of the last five Presidents have been required to pay back taxes that the IRS determined were due and owing. Here the Clintons have reached back 14 years to a time long closed by the IRS and, after careful investigation, have made the determination themselves to pay not only the tax but the interest for that entire period in an amount that dwarfs the tax paid.

With respect to what the IRS's procedures are, do you know, Mr. Norton, what the statute of limitations is with the IRS with respect to failure to make payments?

Mr. NORTON. Normally, it is 3 years from the due date of the tax return.

Mr. BEN-VENISTE. Unless fraud is involved?

Mr. NORTON. That's right.

Mr. BEN-VENISTE. In which case it would be?

Mr. NORTON. A 25 percent misstatement of gross income would be 6 years. Fraud is unlimited.

Mr. BEN-VENISTE. So 6 years and 3 years. And here, according to Mr. Kendall's statement, 2 years ago all of this was fully laid out. The taxes were fully paid, even though the IRS had no ability to collect it. Is that right?

Mr. NORTON. That's right.

Mr. BEN-VENISTE. I am delighted that Mr. Chertoff has agreed with the Pillsbury analysis. That is the first time we have heard such a statement from the Majority side. And we can quote the exact language that was written at page 31 of the Pillsbury Report which says:

On August 23, 1980, the Clintons paid \$9,000 to an unknown payee. Through a reconstruction of a Citizens Bank mortgage history it has been determined that this payment was applied as principal to the outstanding balance of the Citizens Bank. The Clintons deducted the \$9,000 payment as an interest expense in their 1980 Federal Income Tax Return.

This is the transaction that Mr. Chertoff asked you whether it was appropriate to deduct a principal payment as interest. Obviously, that was an error.

Mr. NORTON. Yes, sir.

Mr. BEN-VENISTE. Obviously, also, this has been the subject of much prior discussion and whatever tax liability incurred has long been paid. Indeed, the Majority has employed, according to what we see in the reports, long ago on this issue, an individual by the name of Steven Bankler who has sat in on your depositions, and who was a consultant to The Wall Street Journal. Mr. Bankler's opinion of the Clintons owing more tax liability than reported has, in itself, been well documented; and now, I guess, life follows art. We now see the expression of Mr. Bankler's previously formed opinion produced in the questioning here today.

Mr. Cole.

Mr. COLE. Mr. Chertoff also asked you, Mr. Norton, about a payment in 1978 that might have covered interest for 2 years, 1978 and 1979. Do you recall that particular interest payment by the Clintons?

Mr. NORTON. Yes, sir.

Mr. COLE. That is described in the Pillsbury Report at page 28 where it states that "The Clintons paid their portion by personal check dated December 28, 1978, for \$10,130.58 made out to the Great Southern Land Company." And there is a footnote that says:

Because they paid the money to Great Southern Land Company in 1978, the Clintons claimed the entire amount as an interest deduction on their 1978 Income Tax Return, even though the interest on the Whitewater debt was only partially due in 1978.

Now at this time, Mr. James, in 1978 and 1979, you have already testified that Mr. McDougal was managing the Whitewater investment, was he not?

Mr. JAMES. Yes, sir.

Mr. COLE. Do you have any reason to believe that the Clintons would have known, other than from whatever information Mr. McDougal would have provided to them, whether a particular obligation was interest, or principal, or for one year or another?

Mr. JAMES. No, sir. I, you know—

Mr. COLE. They were not calling you and asking you for information, or asking you to provide them copies of the books and records of Whitewater Development Corporation, or anything like that?

Mr. JAMES. No, sir. As I stated, I didn't have any dealings with it before it was incorporated.

Mr. COLE. Now let's talk a bit about Mr. McDougal and his management style of his various real estate ventures. He had several at that time, did he not?

Mr. JAMES. Yes, sir.

Mr. COLE. About how many different real estate developments at different places in the State of Arkansas was Mr. McDougal managing then? By "then," I'm sorry, I mean, the 1978-80 time period.

Mr. JAMES. I would say five or six, at least.

Mr. COLE. Was Mr. McDougal a good and careful recordkeeper with respect to those various developments?

Mr. JAMES. No, sir. He carried a lot in his head.

Mr. COLE. He carried it in his head. In fact, at the end of the year, did he sometimes bring piles of checks, documents, and receipts in a box, hand it to you and say, "here, do the tax returns"?

Mr. JAMES. Basically, yes, sir. On most of them I got them at the end of the year.

Mr. COLE. So you would not know until the end of the year what Mr. McDougal had done during the year, and then he would just give you a kind of unstructured pile of information that you had to sort through and prepare a return?

Mr. JAMES. Yes. According to my deposition, I got check stubs, bank statements, and documents like that and had to file a return from that; plus sitting down with Mr. McDougal and asking him questions.

Mr. COLE. You were the accountant for Whitewater? You were the person who was responsible for keeping his books and records and preparing his tax returns?

Mr. JAMES. Yes, sir.

Mr. COLE. Do you have any reason to believe that Mr. McDougal was more careful or provided better information to people who may have invested with him in these ventures?

Mr. JAMES. I had no knowledge of that, sir.

Mr. COLE. So in fact, they may have had even less information than you had?

Mr. JAMES. Yes, sir.

Mr. COLE. What you had wasn't very good, was it?

Mr. JAMES. That's possible.

Mr. BEN-VENISTE. When Mr. McDougal left Arkansas, that was in what, 1986?

Mr. JAMES. I'm not sure what year, sir.

Mr. BEN-VENISTE. Well, whenever it was that he left, he took his "head" with him and left the shoe boxes.

Mr. JAMES. Well, I had basically stopped doing his work for him by then.

Mr. BEN-VENISTE. You were sort of the voice of organization, at least in terms of trying to reassemble or reconstruct these records?

Mr. JAMES. Yes, sir.

Mr. BEN-VENISTE. Did you know of any other person that Mr. McDougal relied upon to provide that service?

Mr. JAMES. No, sir.

Mr. BEN-VENISTE. So that when Mr. McDougal left taking his head full of organization such as it was with him, and leaving behind perhaps even less in the way of documentation than you were used to assembling, it would be quite a Herculean task for somebody to make sense out of it?

Mr. JAMES. That is correct.

Mr. BEN-VENISTE. We would cede back the time to try to move this along.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Norton, you did the Clintons records from 1977 to 1983?

Mr. NORTON. I prepared their tax returns from 1977 to 1983.

Senator MURKOWSKI. You are a CPA?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. You have been in practice how long?

Mr. NORTON. Since 1967.

Senator MURKOWSKI. All right. You signed off on these returns as a CPA for the Clintons?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. When you are in discussion with your clients, as is the case, what is your approach to having documentation in case the IRS should audit the tax return? Do you encourage your clients to make sure they have documentation as a matter of course?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. Why, then, in this particular 1978 itemized deduction where we have the Great South Land Company taking a deduction of \$10,131, did you not caution the Clintons on the necessity of providing some documentation?

Mr. NORTON. On that specific transaction?

Senator MURKOWSKI. Well, it is the largest single deduction in the 1978 return, and it is one of the items in question here.

Mr. NORTON. I do not know how to answer that question. That was a long time ago.

Senator MURKOWSKI. When you sat down and reviewed the form prior to them signing it, and as you indicated it is a matter of procedure to have documentation, did you say, well, we ought to take a look at the documentation, or do you have the documentation? Was there any reference to documentation on this particular item?

Mr. NORTON. I can't sit here and tell you one way or the other whether that was discussed at that point in time.

Senator MURKOWSKI. But you did sign off on it. You since have become aware that it is not fully deductible?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. Yet, as a CPA you have kind of an obligation to your clients to look after their best interests and to protect them from making a mistake, and this is a pretty significant mistake?

Mr. NORTON. I understand your question. I don't know how to look at each item—

Senator MURKOWSKI. Let me try and help you out. I mean, we all want to take the maximum deductions and pay the least tax and do it in a legal manner, but when we have a payment of the magnitude of this that is taken as an interest deduction, one would want to make sure that that would not be questioned and would be a legitimate deduction. And I am sure you would want to ensure that for your client, as well?

Mr. NORTON. I did rely on the Clintons to know what is interest and what is not interest. I am sure, I doubt seriously—

Senator MURKOWSKI. You relied on them as to what was interest and what was not interest. Is that correct?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. But did you satisfy yourself that there was adequate documentation to protect the Clintons in the event that there would be an IRS audit? Because you would be called upon in that IRS audit to more or less defend and give the details because the Clintons, obviously, rely on a CPA to do that in the preparation of the tax return?

Mr. NORTON. It is not standard practice to review each piece of documentation when you are preparing a tax return for a client.

Senator MURKOWSKI. No, but it is standard procedure to encourage and satisfy yourself that the document exists, because you sign off on this to the best of your knowledge that this is a true and accurate representation of the material that has been provided.

Ordinarily, I think most CPA's would ensure to the client that they have adequate documentation. I am just curious to know why in an item as significant as this that that is apparently overlooked and now we find it was not an allowable deduction in its entirety?

Mr. NORTON. We do not know whether it was overlooked. No. 1, that was a transaction that occurred in 1978. My memory on an individual transaction that long ago is not that good. No. 2, my files are not available to me to know what was discussed with the Clintons, if anything. I can't say one way or the other whether anything was discussed as to the documentation on that item.

Senator MURKOWSKI. In 1980, the Clintons deducted \$9,000 as interest on a tax return. However, that is the \$9,000 payment to pay part of the principal to Whitewater and not interest accrued as a result of Whitewater; right?

Mr. NORTON. Yes.

Senator MURKOWSKI. Did you prepare that return, as well?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. So we have gone from 1978 where there wasn't documentation to a situation in 1980, what was the circumstances there?

Mr. NORTON. The circumstances would have been the same. The Clintons would have supplied me a list of information, you know, like a list of interest expense, and that documentation would be in my files. Again, those files are not available. I don't know where they are at this point.

Senator MURKOWSKI. Well, it seems inconsistent to me, but apparently consistent in the manner in which these two itemized deductions have been taken, that you were simply satisfied with the information the Clintons provided you, as opposed to asking them for documentation, or to ensure that if there were an audit, the documentation was in your files or their files?

Mr. NORTON. In fairness, in answering that question, I do remember them, both Mr. and Mrs. Clinton, supplying me, individually, with lists of tax information. Whether there was any other documentation, I can't sit here and tell you yes, or no.

Senator MURKOWSKI. If they would have asked you if they could have taken a payment and deducted it for principal, what would have you have told them?

Mr. NORTON. No.

Senator MURKOWSKI. Yet clearly in both these instances, in 1978 and 1980, that is what happened, basically. I mean, we can go into what portion was interest and what was principal but clearly they were not all deductible.

Mr. NORTON. Well, one of these payments, and I do not know which one, the one that had no payee on the check—I was shown that in my deposition the other day—had on it "reimbursement of 6 months interest." Whether I ever saw that documentation before the deposition, I cannot sit here and tell you. But if you just looked at that one check and saw it was written for reimbursement of 6 months interest, I am not sure how far back I would have to go to look at documentation.

Senator MURKOWSKI. It is difficult to go back and address past documentation, but you, sir, are a CPA and clearly had you been presented with the question by your client, I have got a payment here and I would like to deduct it because it is a business expense, and a portion of it goes to principal and a portion to interest, you would have said, well, fine, we can consider the interest but we cannot consider the principal.

Mr. NORTON. You are exactly right, sir.

Senator MURKOWSKI. But on the other hand, with the clients we have, at that time, Governor Clinton, right?

Mr. NORTON. Yes, sir.

Senator MURKOWSKI. Who may not have a great deal of expertise in taxes, but certainly you would expect Mrs. Clinton, an attorney, to know the difference between principal and interest and what is deductible and what is not deductible. Yet, you based these deductions on their submission to you, evidently without documentation, and how do you explain the Clintons overlooking the difference between deducting the entire amount paid as a business expense and the reality that you can only deduct interest?

Mr. NORTON. I can't explain that, sir.

Senator MURKOWSKI. Mr. Chairman, it is difficult for me to just accept the fact that Mr. Norton can't explain the difference; and yet you would expect a lawyer in a partnership, and certainly a Gov-

error, to have some idea of the difference between what virtually every American is aware of; that is, that you can deduct interest but you cannot deduct principal.

We have seen it here in two cases in 1978 and 1980. I guess I would ask one more question, Mr. Norton. Are you aware that the handwritten notes of Vince Foster that were turned over to this Committee described the Clintons' taxes as "a can of worms that you don't want to open"?

Mr. NORTON. I think I read that in one of the news accounts.

Senator MURKOWSKI. Well, Mr. Chairman, I think that we have opened it. It is just inconsistent with reality to suggest that people with the expertise and business acumen of the Clintons, and in a venture, whether it be commodities on one hand, or real estate and Watergate[sic] on the other, would attempt to put down on a tax return a deduction for principal, when everyone is aware that that is disallowed and should have been caught by you.

They should have had documentation. And, you know, here we are with hearings going on in this Committee relative to an item that should not have come up under any terms and circumstances simply because you cannot deduct principal for a business expense.

That is the extent of my questioning, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Norton, do you have reason to believe, or do you have knowledge that the \$9,000 deduction of principal ever was paid? Whether that was ever paid back to the Treasury?

Mr. NORTON. I have no knowledge on that one way or the other.

Mr. CHERTOFF. You don't know, as we speak here today, whether that has ever been paid back?

Mr. NORTON. I don't know.

Mr. CHERTOFF. I take it with respect to the commodities profit in 1980, the \$6,000-plus profit which I guess after the Special Prosecutor was appointed, Mr. Kendall issued an announcement about the fact they discovered this additional \$6,000 profit. During that 14 years between the time it should have been reported and the time it was reported, did you have any inkling about it from the Clintons?

Mr. NORTON. No, sir.

Mr. CHERTOFF. By the way, regarding the issue of the Pillsbury Report—and just to make it clear, I was reading I think from what the accountants did in reconstructing the records—did the lawyers from Pillsbury ever interview you?

Mr. NORTON. No, sir.

Mr. CHERTOFF. So you never were able to tell them of your recollection of Mr. Clinton's "back off" instructions to you during the initial discussion with Mr. McDougal and Mr. Clinton?

Mr. NORTON. That's right, sir.

Mr. CHERTOFF. Mr. James, I would like to close by turning to you. I would like to give you a page of a book written by James Stuart, page 153, called "Blood Sport." There are two paragraphs that recount a discussion which the author says took place between you and Susan McDougal.

There are only three possibilities with respect to this discussion. Either the author made it up, or he got his information from you, or he got his information from Susan McDougal. So since we have

you, I want to go through this with you and I want to ask you a couple of questions. This relates to an event that is supposed to have occurred in 1986. Beginning in the first full paragraph:

Perhaps the 1984 delays could be ascribed to negligence, but now in 1986 Susan felt that Hillary was being obstructionist. Susan was so upset by Hillary's recalcitrance that she called Charles James, the accountant who handled the Whitewater books and had handled the paperwork to incorporate Whitewater Development in the first place. Susan explained that Hillary was refusing to submit a financial statement, and she was desperate. What can I do, she asked? This whole house of cards could come down.

James recognized how upset Susan was and how important it was to get the financial statement. He said he would bring the Whitewater records over to her house and they would prepare some information to use with Hillary. When he arrived, James and Susan sat down and James wrote down the various payments from the McDougals and the Clintons on a yellow legal pad. Of the almost \$200,000 that the Whitewater partners had had to contribute to cover shortfalls in income from the development itself, the McDougals had contributed just over \$138,000. The Clintons just under \$36,000. Before performing this exercise, James and Susan hadn't realized how large a discrepancy the payments reflected and James was irate. You tell her, by God, you have given all this money to this project and, by God, you want the statement.

Mr. James is this true?

Mr. JAMES. No. I don't ever recall this meeting, or any of this.

Mr. CHERTOFF. Now when you say you don't recall it, it is very important here because, remember, there are only three possibilities. Either the author just made it up, or it comes from Susan McDougal, or it comes from you?

Mr. JAMES. It did not come from me.

Mr. CHERTOFF. Are you saying you don't remember one way or the other, or are you absolutely saying that this story is untrue?

Mr. JAMES. I don't recall this meeting or this taking place at all.

Mr. CHERTOFF. So you are not in a position to deny that, for example, if Susan McDougal recalls it but you can't confirm it either?

Mr. JAMES. That's right.

Mr. CHERTOFF. That is all my questions, Mr. Chairman.

Senator MURKOWSKI [presiding]. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, that is about as close to a denial as I have ever heard that anything remotely like this occurred. If something like this occurred, you would remember it?

Mr. JAMES. I would think so, sir.

Mr. BEN-VENISTE. And—

Mr. JAMES. Whoever the author was of this book never contacted me.

Mr. BEN-VENISTE. Well, we have now approached a new level here. Fiorello LaGuardia read the comics to the public in New York when there was a newspaper strike, and I guess we are into a new era of reading fictionalized accounts, or narrative versions of events.

Who knows who produced this information, or how it was sliced, diced, and put in the Cuisinart to come in this form. We have dealt with other parts of this book and, as I have said before in these hearings, it is not my intention to do a book review of Mr. Stuart. But clearly in regard to his account of the Clinton's financial statements and the way the loan was classified at the bank in Flippin where, according to the testimony we have produced under oath, was grossly inaccurate and unfair.

This is another example where the proposition is put forward that a conversation involving all of these elements occurred, you were supposed to be one of the participants, and quite clearly on the basis of everything you know, that conversation did not occur?

Mr. JAMES. Not that I recall, sir. And I would think I would recall that.

Mr. BEN-VENISTE. I think that is a fair enough note to close on.

Senator MURKOWSKI. We have come to the determination that is enough for today. We are going to adjourn the hearing, and we will reconvene tomorrow at 10:00 o'clock.

Thank you, Mr. Norton, Mr. James, I wish you a good day.

[Whereupon at 11:55 a.m., the hearing was recessed, to reconvene at 10:00 a.m. on Thursday, May 16, 1996.]

[Appendix supplied for the record follows:]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

-----X
)
 UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 VS.) NO. LR-C-95-173
)
 JAMES B. McDOUGAL, JIM GUY TUCKER,)
 SUSAN McDOUGAL,)
 DEFENDANTS.)
)
 -----X

— — — 0 — — —

VIDEOTAPED DEPOSITION

OF

PRESIDENT WILLIAM JEFFERSON CLINTON

— — — — —

Sunday, April 28, 1996

-----○-----

A P P E A R A N C E S:

ON BEHALF OF THE PLAINTIFF:

WILLIAM RAY JAHN, ESQUIRE
MS. LEROY MORGAN JAHN, ESQUIRE
JACKIE M. BENNETT, ESQUIRE
AMY J. ST. EVE, ESQUIRE
ROD J. ROSENSTEIN, ESQUIRE
W. HICKMAN EWING, ESQUIRE
JUDY MARIE NANCE, ESQUIRE
Office of Independent Counsel
Two Financial Centre Parkway, Suite 134
Little Rock, Arkansas 72211

PETRE'S STENOGRAPH SERVICE
501-376-1411

1 Q All right. Well, did you ever give Mr. McDougal
2 either expressed or implied permission to affix your
3 signature to any documents bearing -- or relating to
4 Whitewater Development Corporation business?

5 A I don't remember having such a discussion, but Mr.
6 McDougal was clearly managing the property and doing
7 what he thought that he could to move the property.

8 Q Okay.

9 A But I don't remember any specific discussion of
10 that, sir.

11 Q And you entrusted Mr. McDougal, or you trusted Mr.
12 McDougal to do what was necessary for the benefit of the
13 joint venture between yourself and your wife; is that
14 correct?

15 A I did trust him, yes, sir.

16 Q All right. And were there occasions, for instance,
17 where Mr. McDougal would send you documents to sign,
18 such as loan renewals and extensions, that you would
19 sign and return to him?

20 A Well, I signed some renewals and extensions over
21 time, perhaps he sent them to me. I don't remember
22 specifically.

23 Q Well, did you ever initiate or undertake an active
24 role in obtaining the financing for Whitewater
25 Development Corporation, itself?

1 A No, sir, I did not.

2 Q All right. As far as the initial loans that
3 Whitewater, can you explain to the jury basically how
4 Whitewater Development Corporation was initially
5 financed?

6 A Yes, sir. When we bought the 230 acres of land, we
7 -- the price was \$200,000.00, and we paid \$20,000.00
8 down, which we financed with a loan, I think from Union
9 Bank of Little Rock, but anyway, from another bank, and
10 then we borrowed the \$180,000.00 amount from the local
11 bank in Marion County, the bank in Flippin, it has had
12 several different names over the last 15 years, I think
13 it has had three different names, but anyway, it is the
14 only bank in town.

15 Q Okay.

16 A We borrowed the money from that bank, the principal
17 amount. And it was -- and our hope, I will say again,
18 was that we could sell enough lots so that the income
19 from the lots would at least be sufficient to pay off
20 the bank notes when they came due, and then hopefully,
21 some day, we would actually make a profit.

22 Q Okay.

23 A It was a vain hope, as it turned out.

24 Q As far as the land itself, let's take it one step at
25 a time, you talked about the purchase of the land. Did

1 dreams or visions were for this particular property?

2 A Well, he told me what he hoped -- he told me what he
3 hoped would happen to the business ventures.

4 Q Okay.

5 A And I thought it was a good risk, and so I joined
6 him.

7 Q And you placed your trust, and your wife placed your
8 trust in Mr. McDougal's abilities and his integrity; is
9 that correct?

10 A Yes. But we also had an independent judgment about
11 what the market would probably do. Turned out our
12 judgment was wrong.

13 Q Now, you had a situation involving Mr. Logan's
14 property. You indicated you got some financing at Union
15 National Bank. Do you know who the loan officer was at
16 Union National Bank that made that loan?

17 A I don't remember that, sir.

18 Q Did you ever know or meet a Harry Don Denton that
19 worked at Union National Bank?

20 A I know who Don Denton was. I'm not sure I met him
21 at that time or whether he was the loan officer on the
22 note.

23 Q Did you have anything to do with acquiring the
24 initial financing from Union National Bank?

25 A I'm not sure. I might have, because I had some

1 friends who worked there and I knew the people who owned
2 the bank, but I'm not sure.

3 Q As far as the major financing from the only bank in
4 Flippin, and I'm with you, I can't keep the names
5 straight, so let's just refer to them, to the bank in
6 Flippin, as far as the major financing, did you have
7 anything to do with that major financing?

8 A Well, I knew the people at the bank, and I was aware
9 that they were willing to finance it, but I believe Mr.
10 McDougal made the contact.

11 Q Okay. So, again, you were deferring to Mr.
12 McDougal's expertise and Mr. McDougal's leadership --

13 A That's right.

14 Q -- in terms of establishing this particular
15 transaction?

16 A That's correct.

17 Q Now, let's just jump ahead. You indicated in 1981
18 there was a representation made to you by Mr. McDougal
19 that the bank, in and of itself -- I mean, the land, in
20 and of itself, was now generating enough income to
21 become self-sufficient. Do you remember that, sir?

22 A I believe, to be specific, Mr. Jahn, I believe that
23 the representation was that enough lots had been sold so
24 that the cash flow on the lots would at least cover the
25 bank notes when they came up.

1 Mr. Burge. We participated in a portion of the loan.

2 Mr. Chertoff. Is that the same thing as saying you
3 basically split the loan and another bank took up half the
4 loan?

5 Mr. Burge. Yes, sir.

6 Mr. Chertoff. What was the bank that took up the other
7 half of the loan?

8 Mr. Burge. Union National Bank of Little Rock.

9 Mr. Chertoff. How did that bank come to be the one that
10 was invited in to take in half the loan?

11 Mr. Burge. They were our major correspondent.

12 Mr. Chertoff. That means a bank in Little Rock with
13 whom you had a relationship; right?

14 Mr. Burge. That is correct.

15 Mr. Chertoff. Now, Mr. Denton, you were at the Union
16 National Bank of Little Rock in 1978?

17 Mr. Denton. Yes.

18 Mr. Chertoff. What was your position at that point?

19 Mr. Denton. Senior vice president and chief lending
20 officer.

21 Mr. Chertoff. Do you remember a time that you learned
22 about a loan that was going to be made for a real estate
23 venture to be handled by the McDougals and the Clintons?

24 Mr. Denton. Yes.

25 Mr. Chertoff. How did you first learn about that loan?

1 Mr. Denton. I was approached by one of two individuals
2 that were an emissary for the owner of the Bank, Herbert
3 McAdams.

4 I was informed that the two parties and their wives were
5 purchasing real estate; that Union Bank was being asked to
6 make a \$20,000 unsecured loan for the equity in that
7 purchase.

8 At the time, I understood that the balance of the
9 purchase price would be carried by the seller. I was not
10 aware another bank was involved in the transaction.

11 Mr. Chertoff. So you were approached about the \$20,000
12 portion of the loan? Is that right?

13 Mr. Denton. Yes.

14 Mr. Chertoff. Who were the two--you said there were two
15 people, one of two people who approached you on behalf of
16 the owner. Who were these people you were referring to?

17 Mr. Denton. It was either Gene Smith or Paul Berry.

18 Mr. Chertoff. And what was their function or their
19 position at the bank?

20 Mr. Denton. They were both public relations officers
21 that functioned as lobbyists, paid lobbyists on staff at the
22 bank.

23 Mr. Chertoff. You mentioned an individual by the name
24 of Paul Berry, whose name actually came up I guess earlier
25 in the year in connection with a discussion at the White

1 House about--I think it was in January of 1994--about
2 Beverly Bassett Schaffer. There was a list of people that
3 might be sent down to Arkansas.

4 Can you just tell us a little bit about Mr. Berry? You
5 said he was a lobbyist for the bank?

6 Mr. Denton. Yes. Paul Berry had--the reason I am
7 uncertain as to which of those parties approached me is
8 because Mr. Berry was employed at just about that time in
9 1978 by the bank to actually take over and learn the ropes
10 from Gene Smith.

11 Incidentally, Mr. Smith died shortly after that period
12 of time.

13 Paul Berry had previously been employed as a lobbyist
14 for, I believe, the American Medical Association, had worked
15 some for the Tyson Foods operation in Northwest Arkansas,
16 and as I recall was a former roommate of Bill Clinton's.

17 Mr. Chertoff. Now were you told by this emissary from
18 the owner of the bank why the owner of the bank wanted you
19 to grant this loan to the McDougals and the Clintons?

20 Mr. Denton. I was informed that the basis of the loan
21 was Bill Clinton, who was described at that point as an up
22 and coming political start, rising star in the State of
23 Arkansas.

24 Mr. Chertoff. So you were told that the owner of the
25 bank wanted you to make the loan because it was to a group

1 that included Mr. Clinton and Mr. Clinton was viewed as
2 having good political prospects?

3 Is that right?

4 Mr. Denton. That is accurate; yes.

5 Mr. Chertoff. Had you not gotten that instruction,
6 would you in your capacity as a bank officer, would you have
7 approved an unsecured loan to Mr. McDougal and to Mr.
8 Clinton and their wives?

9 Mr. Denton. No.

10 Mr. Chertoff. Why not?

11 Mr. Denton. I had previous banking experience with Jim
12 McDougal, all of which had been very satisfactory, but all
13 had involved the personal involvement of former Senator
14 Fulbright.

15 Senator Fulbright had guaranteed all the previous loans
16 to Mr. McDougal. McDougal had a reasonably modest net worth
17 and was not entitled to a \$20,000 unsecured credit, in my
18 opinion.

19 Mr. Chertoff. Now you also indicated, Mr. Denton, you
20 did not realize at the time you were involved in a \$20,000
21 loan; that there were going to be other loans and
22 participation from other banks on portions of this loan.

23 Is that correct?

24 Mr. Denton. I was not aware of that. I had understood
25 that the other loan would be carried by the seller of the

1 property.

2 Mr. Chertoff. Now did you receive financial statements
3 in connection with this \$20,000 loan?

4 Mr. Denton. I don't recall if I received one
5 specifically on that loan. I had in the bank's possession
6 current financial statements from Mr. McDougal on existing
7 loans. I did not receive a personal financial statement
8 from Bill Clinton.

9 Mr. Chertoff. Was there a point thereafter that some of
10 the Bank Examiners, or regulators at some point criticized
11 the documentation underlying this particular loan to the
12 McDougals and the Clintons?

13 Mr. Denton. As I recall, within a year, perhaps a two-
14 year period, that loan was lifted among other loans as being
15 one poorly documented for having the absence of financial
16 statements.

17 Mr. Chertoff. Mr. Denton, in this period of time
18 generally, I just want to ask you a question about the
19 philosophy of the bank and Mr. McAdams, the owner of the
20 bank, concerning loans to political figures, did he have a
21 philosophy or a policy, or was there a philosophy or a
22 policy at the bank about how to treat applications for loans
23 from people who were politically powerful?

24 Mr. Denton. I don't know if there was a stated policy
25 regarding political loans. I would say that there was

1 certainly not a formal, written policy in that regard.

2 Mr. Chertoff. Was there a practice?

3 Mr. Denton. The practice was fairly well described.

4 Mr. McAdams was actively involved in politics and had been
5 for a number of years, and had a number of contacts in the
6 political arena, and frequently extended credit to political
7 entities.

8 Mr. Chertoff. Mr. Burge, I want to come back to you.

9 Now at some point in 1978 the loan is out; the property
10 is acquired. Your bank, the Citizen's Bank, has about half
11 of the loan, about \$90,000, and the other part of it is over
12 at Union National Bank.

13 Is that right?

14 Mr. Burge. That's correct.

15 Mr. Chertoff. And did there come a point that you
16 became concerned about the problem with the sales of the
17 property that was hopefully supposed to be providing the
18 income to pay back the loan?

19 Mr. Burge. Yes, I did.

20 Mr. Chertoff. What was your concern?

21 Mr. Burge. Well, there had been a period of time there
22 had not been any sales at all on the property.

23 Mr. Chertoff. Did you take some steps to approach the
24 McDougals and the Clintons about requiring them to start to
25 pay off the principal of the loan because you were concerned

(2) problem with that.

(3) I do have a problem with us getting into

(4) whatever business Mr. Berry maybe doing that
Doesn't

(5) have anything to do with the resolution. You know, I

(6) used to lobby and I know that in some sense - in

(7) some instances, it is not appropriate to disclose

(8) what you are doing on behalf of your clients. I

(9) don't know if that's the case for Mr. Berry or not.

(10) But I don't think we need to put him in that

(11) position.

(12) MR. BARTOLOMUCCI: The resolution

Page 16

(1) doesn't - we can ask him what his date of birth is,

(2) but some questions are background and the authority

(3) to ask them are fairly implicit in other items in the

(4) resolution, and in this case, I think this fairly

(5) goes to the nature of his involvement with the White

(6) House.

(7) I have no intention of probing in any

(8) detail the - what he does on behalf of clients with

(9) the White House, but I did want to have a sense of

(10) who he talks to at the White House because then that

(11) can exclude certain possibilities later.

(12) MR. IVEY: I don't have any problem with

(1) that type of questioning. I do have a concern about

(2) asking specifically about the substance of what he

(3) may have lobbied on.

(4) MR. BARTOLOMUCCI: I had no intention of

(5) asking anything like that.

(6) THE WITNESS: The appropriate answer is I

(7) have never requested any member of the White

(8) House

(9) staff or the President to make an appointment for me

(10) anywhere in the executive branch of government.

(11) never

(12) at any time during his presidency. I have, for

Page 17

(1) information purposes. I informed different people in

(2) the White House of some of my activities, and I -

(3) when I have been asked what are you doing, Paul, well

(4) I am working on this, that and the other, I have had

(5) that kind of conversation.

(6) BY MR. BARTOLOMUCCI:

(7) Q So, are you telling me that you haven't had

(8) any conversations with White House employees which

(9) were on behalf of clients as part of your lobbying -

(10) A I have had conversations as to process,

(11) how - what the timing will be on matters, and what

(12) the process will be, with the establishment of the

(1) administration's position on the range of issues.

(2) Q Now, you told me that you do lobbying at

(3) the federal level?

(4) A Yes.

(5) Q And I assume that means some interaction

(6) with government employees, so is it members or staffs

(7) of the legislature that you have been involved with?

(8) A I have - yes, and I have also called on

(121) various branches of the administration - of the

(122) executive branch of government. I have arranged

Page 18

(1) meetings for clients, with the various officials in

(2) the executive branch. But your question was about

(3) the White House.

(4) Q That's correct.

(5) Turning your attention back to the Union

(6) National Bank.

(7) A Yes.

(8) Q During the time that you were there, were

(9) you aware of the fact that the bank had made an

(10) unsecured \$20,000 loan to Bill Clinton and Jim

(11) McDougal?

(12) A Yes, sir.

(13) Q Did you have any involvement -

(14) A Are you aware that we had a program at

(15) Union National Bank where we routinely provided

(16) unsecured loans to individual accounts? That

(17) marketing device was called "prestige banking." We

(18) identified young professionals and offered to them a

(19) \$10,000 line of unsecured credit if they would open

(20) their checking accounts with us.

(21) Q So, what you are telling me the bank had a

(22) policy of extending \$10,000 of credit to those young

Page 19

(1) professionals who opened -

(2) A Yes.

(3) Q - new accounts?

(4) A Yes. Many banks had that at that time that

(5) kind of program. It generically had different names

(6) for it.

(7) Q Was this \$20,000 loan to Bill Clinton and

(8) Jim McDougal made as part of the program you have

(9) just described?

(10) A No. It was not unusual. The loan was made

(11) to Mr. Clinton and Mrs. Clinton. I had solicited

(12) their personal banking business and we had their

(13) personal accounts. And when they had a credit need,

(14) we were - I was the one that introduced them, as I

(15) recall to Mr. Denton.

(16) Q I want to be clear on something. It is our

(17) understanding that I described, which was -

(18) A Yes.

(19) Q - granted in June of '93 was a loan to

(20) Bill Clinton and Jim McDougal, and neither of their

(21) spouses were parties to that loan. You mentioned -

(22) A I didn't see the signed loan agreement. I

Page 20

(1) thought it was to Mr. and Mrs. Clinton. I thought

(2) she was on the note also, but I have never seen that

(3) original loan document.

(4) Q I just wanted to make sure we were talking

(5) about the same thing.

(6) A Mr. McDougal was already a customer of the

(7) bank when that loan was made; a loan customer, too.

(8) Q You just said you solicited the Clintons'

(9) personal banking business for the bank?

(10) A Yes.

111 Q Does that mean you were involved in the
112 making of this loan we are talking about?

113 A I was involved in that to the extent that I
114 had asked them to bank with us, open their personal
115 banking accounts with us, and we had personal
116 accounts, banking accounts, of the Clintons, and we
117 routinely call on all our customers, if they had a
118 credit need, if they wanted to borrow money, that was
119 our business.

120 Q Now, it wasn't your idea for Bill Clinton
121 and Jim McDougal to borrow this money, right?

122 A No, they had - they were contemplating

Page 21

11 this investment that has become known as
12 Whitewater.

13 and then Attorney General Clinton, and I discussed
14 whether or not they were going to do that and I said
15 if you make the decision to do so, we would like
16 to - it would be my guess that we would like to make
17 that loan.

17 Q This is June of '78, so you are no longer
18 living with Mr. Clinton, right?

19 A No, I was not. He was the Attorney
110 General-elect - I mean, he was the Attorney General
111 at that time and was running for governor for first
112 term. He was the Democratic nominee for governor at
113 that point.

114 Q And he approached you and said, McDougal
115 and I have this business deal and -

116 A I don't know whether he approached me or -
117 we were together frequently during that period of
118 time, and in the course of a conversation, he made me
119 aware of this possibility.

120 Q What did he -

121 A I had bought a place on the White River
122 myself, lower down, and we were talking about - a

Page 22

11 number of people were interested in land in north
12 Arkansas.

13 Q What did he tell you about the business
14 deal that he was getting into with Mr. McDougal?

15 A Well, the preliminary discussion in my
16 memory was simply that he and Mrs. Clinton were
17 thinking of trying to buy a small place up on the
18 White River, for a vacation getaway place for
19 recreation. That was in the original discussion.

110 Q As we now know, that's not the form that
111 the deal took, which was in fact -

112 A No. I was never party to any discussions
113 where either of the Clintons were present with
114 Mr. McDougal. I knew Mr. McDougal during that
115 period

116 of time quite well, also.

117 Q Okay, so I just wanted to clear up one
118 thing. It was then Attorney General Clinton who
119 talked to you about the possibility of a loan, rather
120 than Jim McDougal?

121 A That's right. We discussed it.

122 Q And I assume at some point you guys decided

123 that in fact -

Page 23

11 A I thought it was a good - I thought it
12 would be a good thing for him.

13 Q And -

14 A Little did I know.

15 Q Did he tell you that he wanted \$20,000?

16 How did that figure come about?

17 A I don't - there was no figure that I
18 recall in the original discussion. There may have
19 been some estimate of what a piece of land within
110 this development and some sort of cottage or house
111 would cost, but I don't specifically recall a number
112 being said.

113 Q After you -

114 A We knew it would be a relatively small
115 loan.

116 Q \$20,000 being relatively small?

117 A Yes. That size loan at that point within
118 our bank was not a large loan at all.

119 Q Now, what did you do after you understood

120 that the Attorney General wanted to take out this

121 loan? Did you approach someone at the bank?

122 A Yes.

Page 24

11 Q Okay, what did you do?

12 A As I recall - I don't have specific
13 recollection of making a formal appointment. I
14 was - my office at the bank was - I was in the main
15 lobby at this point and Mr. Denton's office was in -
16 just off the main lobby on the same floor and I
17 routinely spoke to members of the loan department
18 about customers that I had solicited their business.
19 and in the course of the conversation, if they
110 mentioned a credit need, as part of my duties, I
111 reported such credit needs for existing or potential
112 customers to the loan department. And I mentioned
113 this to Mr. Denton or - and I am sure I apprised him
114 of this potential credit need.

115 Q Mr. Denton was loan officer at the bank?

116 A Senior vice president, a senior lender of
117 the bank. He could commit the bank's legal limit by
118 himself, which was probably 4-, 5- or \$6 million.

119 Q And Mr. Denton is the person who formally
120 approved the loan, correct?

121 A That's my recollection. Again, I don't -

122 I don't recall ever seeing the actual loan documents.

Page 25

11 but I believe my memory is that he was the loan
12 officer of record, sir.

13 Q Is there some reason why you didn't simply
14 approve the loan yourself?

15 A I was not a loan - I was not a loan
16 officer. Well, actually I could make - I had a few
17 loans that I made, but my loan limit was lower than
18 that. I was a liability man. I did not do loans.

119 That's not my normal job.

110 Q So you didn't have the authority to make a

111 loan of that size -

1. A I didn't have authority to make a \$20,000
 2. loan, and ultimately, was not in the loan business at
 3. all for the bank. That was not part of my duties at
 4. all.

5. Q Now prior to the time that you approached
 6. Mr. Denton, did you discuss the possible loan with
 7. the elder McAdams?

8. A I may have - prior to my discussion with
 9. Mr. Denton?

10. Q Right.

11. A I - I doubt that I did.

Page 26

12. Q So -

13. A In 1978, both Attorney General Clinton, and
 14. his wife, Hillary Clinton, she had joined the Rose
 15. Law Firm at that time, and their profile fit
 16. precisely the very kind of people that we were trying
 17. to get to bank with us, that he was a public figure.
 18. was - we tried to be careful to document anything we
 19. do with a public figure, maybe even more so than we
 20. did with other loan customers. Because routinely,
 21. the statements of candidates or public officials
 22. while they were not required by law, they often as a
 23. matter of campaign issues were disclosed, so we
 24. wanted to have things always ready in case they were
 25. in the public domain.

26. Q Was it your belief that it would benefit
 27. the bank to have the Attorney General as a loan
 28. customer?

29. A No more than anybody else's - yes, we
 30. charged interest. Charged him the same interest we
 31. would charge anybody else in similar credit
 32. circumstances.

33. MR. IVEY: Hold on a second, Mr. Berry.

Page 27

34. THE WITNESS: It was not discounted at
 35. all. We charged him what the going rate was.

36. MR. IVEY: Give me a second, Mr. Berry.

37. Could you read back the question and the
 38. answer, please.

39. (The reporter read the record as requested.)

40. MR. IVEY: Sorry to interrupt.

41. THE WITNESS: All right.

42. BY MR. BARTOLOMUCCI:

43. Q Now, do you remember what the - let me
 44. withdraw that and start again.

45. When you talked to Mr. Denton, did you say
 46. this is a loan that we should consider making, or did
 47. you tell him more definitively that this loan was to
 48. be made?

49. A I never told Mr. Denton any loan had to be
 50. made. I didn't have that kind of authority vis-a-vis
 51. Mr. Denton. He had much more authority than I did.

52. Q Did you tell Mr. Denton that this was a
 53. loan that Mr. McAdams wanted to be made?

54. A Never.

55. Q Did you tell Mr. Denton that -

Page 28

56. A It was obvious to Mr. Denton who Mr. and

57. Mrs. Clinton were, and Mr. Denton already had a
 58. customer relationship with Jim McDougal, who was
 59. one
 60. of his borrowing customers.

61. Q I don't suppose you saw Mr. Denton's
 62. testimony two days ago before our committee?

63. A No, I did not. I have now read a quick
 64. paragraph in the newspaper accounts, but I did not
 65. see the hearings for the last two days. I have had
 66. total distractions because of personal family
 67. matters, and I am at a serious disadvantage. I don't
 68. know what has been said.

69. Q Well -

70. A All I know to do is tell the truth as I
 71. remember it.

72. Q And obviously that's all we are asking
 73. for.

74. And I will be happy to give you a synopsis
 75. of Mr. Denton's testimony because we are not looking
 76. to hide the ball here?

77. A He has had a lot more practice at his
 78. testimony. Make sure that's in the record.

Page 29

79. MR. BARTOLOMUCCI: It is on the record.

80. MR. IVEY: It is in there.

81. THE WITNESS: You bet.

82. BY MR. BARTOLOMUCCI:

83. Q Now, Mr. Denton said he couldn't recall
 84. exactly but he was sure that it was either you or
 85. Mr. Gene Smith that approached him about this loan.

86. A Gene Smith was executive vice president of
 87. bank at that time, and Gene Smith may have spoken
 88. to

89. Mr. Denton. I have no knowledge of that. I actually
 90. worked with Gene Smith. He, from time to time, was a
 91. de facto supervisor of mine, but I was the one that
 92. spoke to Mr. Denton first. And whether anybody else
 93. ever talked to him about this, I do not know.
 94. But we routinely, in bank procedures, had
 95. every Friday morning a bank officers loan review,
 96. which was led by the loan department, marketing
 97. department. All departments of the bank had
 98. representation at that meeting so all the business of
 99. the bank was discussed, what customers we lost and
 100. what customers we had gotten, and what loans had
 101. been
 102. made.

Page 30

103. So that we tried to coordinate and
 104. everybody was informed as to what was going on, and
 105. this loan would have been discussed at this meeting
 106. at the appropriate time, so it was not unknown that
 107. this loan - within the bank this loan had been made
 108. to the Attorney General.

109. Q Na, and just to -

110. A And I was a strong advocate. I wanted the
 111. loan made. I made no bones about that. I thought it
 112. was good business, sir.

113. Q Now, it was Mr. Denton's testimony that

(112) either you or Mr. Smith come to him, to Mr. Denton
 (113) and said, approve this loan. This is a loan this
 (114) Mr. McAdams wants to be made.
 (115) A No, that would not have been what I said at
 (116) all.
 (117) Mr. McAdams was quite capable of speaking
 (118) for himself. I had been an account officer on the
 (119) bank accounts of Attorney General Clinton and
 (120) Mrs. Clinton. They had a credit need, and I reported
 (121) it to the appropriate loan-making authority within
 (122) Union National Bank.

Page 31

(11) Mr. Denton was well aware of who the
 (12) Clintons were. We all wanted that business.
 (13) Q Now, it was also Mr. Denton's testimony
 (14) that -
 (15) A And I urged that the loan be made, for both
 (16) because I thought it was good banking business and
 (17) because these were the kind of customers we wanted
 (18) at
 (19) Union National Bank. In my opinion, we wanted those
 (20) kind of customer. I know I wanted them.
 (21) Q You would have said that to Mr. Denton?
 (22) A Yes.
 (23) Q Just to make sure I have this straight, you
 (24) approached Mr. Denton. You discussed this loan with
 (25) him?
 (26) A It was routine. I frequently found credit
 (27) needs from customers that I was calling on and I
 (28) always reported all such credit needs to the loan
 (29) department.
 (30) Q And you told Mr. Denton that this was a
 (31) loan to the sort of people that the bank was looking
 (32) for?
 (33) A Yes. We already had their business. I

Page 32

(11) wanted their loan business, too. We had their
 (12) checking business. I wanted their loan business.
 (13) That was the principal source of revenue for the
 (14) bank, loans.
 (15) Q Did you tell Mr. Denton that then-Attorney
 (16) General Clinton was a rising political star, or words
 (17) to that effect?
 (18) A I didn't have to. It was obvious. He had
 (19) been elected Attorney General and was the
 (20) Democratic
 (21) nominee for governor.
 (22) Q All right, so -
 (23) A And he knew. I didn't have to talk to him
 (24) much. Get this in perspective. We already know knew
 (25) Mr. McDougal's speculation real estate business and
 (26) were loaning money to him for that purpose.
 (27) Q Those were deals that also involved former
 (28) Senator Fulbright, right?
 (29) A I don't know. Again, I did not see those
 (30) loan documents. I knew that Jim McDougal was a
 (31) borrowing customer of Union National Bank. I did
 (32) not
 (33) see those loan documents either.

(122) Q Now, did you have any involvement in this

Page 33

(11) loan after your conversation with Mr. Denton?
 (12) A Not that I recall. I may have - I may or
 (13) may not have been involved in hand-carrying a loan
 (14) extension agreement. Normally those were sent out by
 (15) mail. But Mr. Denton may well have asked me. It was
 (16) not unusual for me to - if any of my customers
 (17) needed a loan extension, sometimes we hand-carried
 (18) those to customers.
 (19) Q Now, there was another loan at Union Bank,
 (20) actually Union Bank took a 50 percent participation
 (21) in a loan, that was made by the Citizens Bank of
 (22) Flippin?
 (23) A Yes.
 (24) Q And this was the loan that was actually the
 (25) mortgage on the Whitewater property.
 (26) Did you have any involvement in Union
 (27) Bank's participation in that loan?
 (28) A No, I went to the correspondent bank
 (29) committee. That bank in Flippin was one of our good
 (30) correspondent banks, and I knew that we had taken a
 (31) participation from Citizens, but I did not know the
 (32) details.

Page 34

(11) Q And you weren't involved in the making of
 (12) that participation?
 (13) A No, no, I was not.
 (14) Q Bill Clinton or Jim McDougal neither of
 (15) them talked to you about the participation?
 (16) A No, not at all. Mr. McDougal was the only
 (17) person that I ever heard discussed as the prime - as
 (18) the principal, in these real estate deals.
 (19) Q Jumping back momentarily to the \$20,000
 (20) loan.
 (21) A Yes.
 (22) Q Did you ever have a discussion about that
 (23) loan, with Mr. McDougal?
 (24) A Not that I recall. I saw Mr. McDougal from
 (25) time to time. He was in and out of the bank, not -
 (26) out of Union National Bank not infrequently, and I
 (27) would see him in passing, and I don't remember any
 (28) specific discussions about it.
 (29) Q Okay, so in your memory that it was -
 (30) A He offered my wife job at one point in
 (31) another real estate project, which she declined.
 (32) Q That was probably a smart move.

Page 35

(11) A Jim was - Mr. McDougal was very successful
 (12) in a number of his land deals up to this one.
 (13) Q All right. Just to close the loop on the
 (14) \$20,000 loan, so it is your memory that it was Bill
 (15) Clinton as opposed to Mr. McDougal who talked to you
 (16) about the loan, about having the bank make that loan?
 (17) A He was the one that - he discussed that he
 (18) was contemplating, he and Mrs. Clinton were
 (19) contemplating buying a piece of property on the
 (20) White
 (21) River, and I said well, if you need to borrow any

Schedule D
(Form 1040)

CAPITAL GAINS OR (LOSSES)

Department of the Treasury
Internal Revenue Service
Reprints as shown on Form 1040

▶ Attach to Form 1040

▶ See instructions for Schedule D (Form 1040)

1978

WILLIAM J. WILLIAMS CLINTON

Tax return preparer's name

478/92/9947

PART I

Short-term Capital Gains and Losses - Assets Held One Year or Less

D

1. Date of property or transaction (Excludes 100 shares of "T" Co.)	2. Date acquired (Mo., Day, Yr.)	3. Date sold (Mo., Day, Yr.)	4. U.S. gross long-term capital gain	5. Cost or other basis, as adjusted	6. Gain or loss from sale for the year	7. Gain or loss from sale after 12/31/78
J-COMMODITIES	/ /	/ /	0	0	26,541	
2 Enter your share of net short-term gain or (loss) from partnerships and fiduciaries					0	
3 Enter net gain or (loss), combine lines 1 and 2					26,541	0
4 Short-term capital loss carryover attributable to years beginning after 1969 (see instructions)					0	
5 Net short-term gain or (loss), combine lines 3 and 4, column (6)					26,541	

PART II

Long-term Capital Gains and Losses - Assets Held More Than One Year

-INSTL SALE SEE SCH	/ /	/ /	/ /	/ /	0	0	7981	
-INSTL SALE-COLLECT	/ /	/ /	/ /	/ /	0	0	991	0
-ACRES-LAND	01/29/77	09/17/79	5,000	2,999	2,001	2,001		
7 Capital gains distributions					0	0		
8 Enter gain, if applicable, from Form 4797, line 4(a)(1) (see instructions)					0	0		
9 Enter your share of net long-term gain or (loss) from partnerships and fiduciaries					0	0		
10 Enter your share of net long-term gain from small business corporations (Schedule S)								
11 Net gain or (loss), combine lines 6 through 10						3,036	991	
12 Long-term capital loss carryover attributable to years beginning after 1969 (see instructions)						0		
13 Net long-term gain or (loss), combine lines 11 and 12, column (6)						3,036		

NOTE: If you have capital loss carryovers from years beginning before 1970, do not complete Parts III, IV, or VI. See Form 4798/1040-1040.

PART III

Computation of Capital-Gains Deduction

(Complete this part only if line 14 shows a gain)

14 Combine lines 3 and 13, column (6), and enter here. If result is zero or a loss, do not complete the rest of this part. Instead stop to Part IV, line 34 on page 2	14	29,577
15 Enter line 13, column (6) or line 14, whichever is smaller. If zero or a loss, enter zero and stop to line 23	15	3,036
16 If line 11, column (6) is a gain, combine lines 3 and 11, column (6), and enter here. If loss, line 11, column (6) shows a loss or zero, enter a zero and stop to line 20	16	991
17 Enter line 11, column (6) or line 16, whichever is smaller	17	991
18 Enter line 15 or line 17, whichever is smaller	18	991
19 Enter 40% of amount on line 18	19	991
20 Subtract line 18 from line 15	20	2,936
21 Enter 50% of amount on line 20	21	1,468
22 Add line 19 and line 21. This is your capital gains deduction	22	1,957
23 Subtract line 22 from line 14. Enter this amount on Form 1040	23	28,040

LP 01602

B.H. Clinton 429-92-9847

INSTALLMENT GAIN ON SALE

DESCRIPTION OF PROPERTY: <u>15 acres unimproved land</u>	DATE ACQUIRED		DATE SOLD	
	<u>1/25 1977</u>		<u>7/23 1978</u>	
1. GROSS SALE PRICE	\$	XXX	\$	14925
2. ORIGINAL COST		7800		XXX
3. IMPROVEMENTS				XXX
4. TOTAL COSTS (2 + 3)		7800		XXX
5. LESS ALLOWED/ALLOWABLE DEPRECIATION				XXX
6. ADJUSTED BASIS (4 - 5)		7800		XXX
7. EXPENSES OF SALE		750		XXX
8. ADJUSTED BASIS PLUS EXPENSES (6 + 7)		XXX		8550
9. PROFIT ON SALE (1 - 8)		XXX		6375
10. MORTGAGE PRIOR TO SALE (ASSUMED BY BUYER)				XXX
11. TO BE COLLECTED BY SELLER (1 - 10)		14925		XXX
12. EXCESS OF ASSUMED MORTGAGE OVER BASIS (10 - 6)				XXX
13. "CONTRACT PRICE" (11 + 12)		14925		XXX
14. RATIO OF PROFIT TO CONTRACT PRICE (9 - 13)		42.9%		
15. DOWN PAYMENT IN YEAR OF SALE		1500		XXX
16. OTHER PRINCIPAL PAYMENTS IN YEAR OF SALE		566		XXX
17. TOTAL COLLECTED IN YEAR OF SALE (15 + 16)		2066		XXX
18. EXCESS MORTGAGE OVER COST (ITEM 12)				XXX
19. "PAYMENTS" IN YEAR OF SALE (17 + 18)		XXX		2066

YEAR	PRINCIPAL PAYMENTS	PERCENT OF GAIN	TAXABLE GAIN		DEFERRED BALANCE OF GAIN
			TO SCH. D	TO FORM 4797	
19 78	2066	42.9%	874		5549
19					
19					
19					
19					
19					
19					
19					
19					

THE TAXPAYER/HEREBY ELECTS TO REPORT THE GAIN ON THIS SALE UNDER THE INSTALLMENT METHOD OF ACCOUNTING AS DEFINED IN IRC SECTION 453.

SALTILLO HEIGHTS

A DIVISION OF — ROLLING MANOR, INC.

PURCHASER'S AGREEMENT

THIS AGREEMENT entered into this day between ROLLING MANOR INC., hereinafter called "SELLER", and WILLIAM C. TITTO

hereinafter called "BUYER" WHEREAS:

WHEREAS, SELLER is the owner of the following described property situated in F. Elmer County, Arkansas: Tract Number 74, Saltillo Heights Estates as reflected by a plat of said subdivision filed with the proper authorities of said county.

WHEREAS, SELLER has this day conveyed by and said property to BUYER upon the terms and conditions hereinafter expressed:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein and the payment of the cash sum hereinafter mentioned, it is mutually agreed as follows:

1. BUYER agrees to pay SELLER for said property the sum of

ELEVEN THOUSAND FOUR HUNDRED ----- Dollars (\$ 11,400.00)

of which BUYER has paid 400.00 cash in hand, the receipt of which is hereby acknowledged, and has executed one note of even date herewith to the sum of

11,000.00 appearing on the reverse side hereof, and payable according to the terms therein set forth.

2. BUYER agrees to pay all taxes and assessments due and payable now and hereafter.

3. Time is the essence of this AGREEMENT, and if BUYER defaults on the payment of any installment of principal and interest for a period of 60 days, or fails to pay any taxes, assessments or insurance premiums when due, SELLER, at its option, may either declare the entire debt with interest due and payable, or rescind this AGREEMENT, and in the event of rescission any moneys paid by BUYER shall be taken and returned by SELLER, and as a penalty, but not in lieu of the property and the relation of the parties thereafter shall be that of

landlord and tenant at the rent of 150.00 per month; and thereafter SELLER, after notice, may demand possession of the property, and BUYER agrees to surrender immediately peaceable possession. No delay on the exercise of any of the covenants herein contained in a manner of such right, but same may be exercised at any subsequent time. Any notices required herein may be made by ordinary mail addressed to BUYER at

OFFICE OF THE ATTORNEY GENERAL, LITTLE ROCK, ARKANSAS

unless SELLER be notified in writing of a subsequent change of address.

4. Upon payment of the entire debt with interest when due, together with all taxes, assessments and insurance premiums due hereafter, SELLER will convey to BUYER the above described property by Warranty Deed and will furnish an abstract of Title certified to the date of this AGREEMENT showing marketable title, or forward Owner's policy of title insurance.

5. It is mutually agreed that no representations whatsoever and incorporated herein shall be binding on either party, and that this AGREEMENT shall not be varied or contradicted hereafter except in writing signed by both parties.

6. This AGREEMENT shall not be sold, transferred or assigned, nor shall said property be leased, without written consent of SELLER, and in the event of any sale, assignment, transfer or lease, without written consent, SELLER shall have the right to exercise the options herein before provided in Paragraph 3. In the event of a sale, transfer or assignment of this AGREEMENT with SELLER's written consent, the assignee or grantee shall succeed to all the rights and liabilities of BUYER, according to the terms of the assignment and consent to be attached hereto.

7. BUYER shall not commit or permit waste; and shall maintain the property as in good condition as at present. Upon any failure so to maintain, SELLER may cause reasonable maintenance work to be performed at the cost of the BUYER.

8. BUYER acknowledges receipt of a copy of The BIR of Arkansas covering subject property which by reference is made a part hereof.

9. It is mutually agreed that SELLER retains all mineral rights to subject property.

WITNESS our hands and seals on this 25th day of JANUARY

19 77

Paul Henry McHugh
Assistant Secretary
Rolling Manor Inc.

W. C. Titto
President
Rolling Manor Inc.

(Seal)

BUYER (Seal)

BUYER (Seal)

INSTALLMENT NOTE

I, 11,000.00 Little Rock, Arkansas
For value received, I, My promise to pay to the order of ROLLING MANOR, INC.

JANUARY 25, 19 77

at HERAPEDIA, ARKANSAS, the sum of ELEVEN THOUSAND ----- DOLLARS

(I, 11,000.00) with interest from date until due at the rate of 10 percent per annum and thereafter until paid at the rate of 10 percent per annum, payable as follows: An installment of DOLLARS (\$ 155.51) due and payable on or before the 1st day of APRIL, 19 77, and so on

installment of ONE HUNDRED FIFTY FIVE AND 51/100 ----- DOLLARS

(I, 155.51) on the 1st day of each succeeding month thereafter until the full amount of interest and principal is paid in full. The interest on this note shall be 10 percent per annum, and shall be compounded annually. This Note is executed in connection with, and is made a part of the agreement of even date herewith, appearing above in which reference is hereby made, between the same parties hereto, for the sale of the property described therein.

Should payment be made in the payment of any installment of principal or interest for a period of 60 days, the entire debt, with interest at the rate of 10 percent per annum until paid, shall become due and payable at the option of the holder hereof. The maker(s) and endorser(s) waive notice, demand and presentment and consent that time for payment may be extended without notice. No delay in the exercise of the option of acceleration shall be construed a waiver of such right, but it may be exercised at any subsequent time during default. Maker(s) shall have the right to pay any multiple of the installment at any installment payment date.

ADDRESS:

BUYER

BUYER

CONFIDENTIAL

UNITED STATES OF AMERICA
RESOLUTION TRUST CORPORATION
WASHINGTON, D. C.

IN THE MATTER OF:

Madison Guaranty Savings
& Loan Association (7236)
McCrory, Arkansas

ORDER OF INVESTIGATION
(Feb. 4, 1994)

INTERROGATORY RESPONSES OF
WILLIAM JEFFERSON CLINTON

Interrogatory No. 1: DESCRIBE each and every occasion
before August 1978 on which YOU:

(a) Bought real estate;

In 1975, I purchased a residence at 930 California Drive in Fayetteville, Arkansas. In late 1976, my wife and I purchased a residence at 5419 L Street in Little Rock, Arkansas.

(b) Obtained bank financing for a real estate acquisition;

I financed the 1975 purchase of my Fayetteville residence with a mortgage loan from the American Savings and Loan Association. My wife and I financed the 1976 purchase of our Little Rock home with a mortgage loan from Capital Savings & Loan Association of Little Rock.

(c) Sold real estate;

I can recall no such occasion prior to August, 1978, except as indicated in the response to No. 1(d), infra.

(d) Invested in real estate (including any investments in corporations and partnerships that dealt primarily in real estate). In answering this interrogatory, be sure to DESCRIBE

000281
Sen. Ltr. Reg.

CONFIDENTIAL

the real estate transactions referred to in documents DKRT900707, DKRT900715 and DKRT900716.¹

I cannot recall very much about these transactions.

However, I believe I made a real estate investment or investments in 1977, which are reported on our 1978 income tax return. I can recall nothing specific about this investment or investments, except I believe that at least one involved the purchase of land near Jacksonville. Reviewing documents DKRT900707, DKRT900715, and DKRT900716 does not refresh my recollection. Please see also: Global Response to No. 2, infra.

Interrogatory No. 2: DESCRIBE YOUR knowledge, as of August 1978, of Jim McDougal's experience in real estate development. In answering this interrogatory, DESCRIBE everything YOU knew as of August 1978 about the activities and the success or failure of the following entities associated with Jim McDougal:

Global Response to No. 2:

As of August, 1978, I had had general conversations with Jim McDougal about his experience in real estate development, and although I can't recall specifically what I learned, I remember

¹ For ease of reference, I attach to these interrogatory responses the documents which the RTC appended to the interrogatories. These documents are marked with tabs which correspond to the interrogatory which references them. The tabs (Tab 1, Tab 8, etc.) are noncontinuous, because not every interrogatory referenced an attached document. I have also referenced certain other documents in my responses, and these documents are attached hereto under a tab which references the interrogatory number with an "A" after it. These "A" tab numbers are likewise noncontinuous, because not every response references an attached document.

CONFIDENTIAL

being of the impression that Jim had done well, that he was considering a number of projects, and that Senator Fulbright was somehow involved with him. At that time, I don't think I had ever heard of the entities listed in this interrogatory with the possible exception of Rolling Manor, and so I was not aware of their activities or their successes or failures. I cannot now recall anything I may have known about Rolling Manor. At that time, I had known Jim McDougal for about ten years, and it was my impression that he was a successful real estate developer.

As reported on our 1978 tax return, a five acre parcel of land was sold on May 17, 1978, for \$5000, resulting in a capital gain of \$2150. To the best of my recollection, this was a real estate investment I had had with Jim McDougal, and, while small, it was a profitable one. This experience confirmed my impression that he was capable of putting together successful real estate ventures.

(a) Great Southern Land Company;

Please see Global Response to No. 2, supra.

(b) Flowerwood Farms, Inc.;

Please see Global Response to No. 2, supra.

(c) Pembroke Manor, Inc.;

Please see Global Response to No. 2, supra.

(d) Rolling Manor;

Please see Global Response to No. 2, supra. I note that, on our 1977 income tax return, a deduction of \$432 was claimed for

CONFIDENTIAL

Interest paid to "Rolling Hill Manor." This apparently was the real estate investment I had with Jim McDougal, but I have no further recollection of what it was.

(e) McDougal & Associates;

Please see Global Response to No. 2, supra.

(f) Riley-McDougal;

Please see Global Response to No. 2, supra.

(g) Fulbright-McDougal;

Please see Global Response to No. 2, supra.

(h) any and all other entities that YOU understood to be associated with Jim McDougal.

Please see Global Response to No. 2, supra.

Interrogatory No. 3: DESCRIBE what investigation YOU undertook, if any, before deciding to purchase the real estate in Marion County, Arkansas that came to be known as Whitewater. In particular, DESCRIBE how this property came to YOUR attention, DESCRIBE each and every conversation YOU had with anyone about it and DESCRIBE each and every document YOU reviewed PERTAINING to it before YOU decided to purchase the property. Also, state whether (and, if so, when and with whom) YOU visited the property before buying it.

I cannot now remember specifically what my wife and I did before deciding to purchase the real estate in Marion County, Arkansas in mid-1978. As a native Arkansan who had spent time all over the state, I had a general knowledge that there were many profitable land investments in the northern part of the state in the 1970's and that there appeared to be a market for vacation and retirement real estate in northern Arkansas, an area

SCHEDULE D
(Form 1040)

 Department of the Treasury
 Internal Revenue Service

Capital Gains and Losses (Examples of property to be reported on this Schedule are gains and losses on stocks, bonds, and similar investments, and gains (but not losses) on personal assets such as a home or jewelry.)

▶ Attach to Form 1040.

▶ See instructions for Schedule D (Form 1040).

1980

15

Name(s) as shown on Form 1040

Your social security number

Part I Short-term Capital Gains and Losses—Assets Held One Year or Less
D

a. Kind of property and description (Exemptions, 100 shares 1% preferred of "E" Co.)	b. Date acquired (Mo., day, yr.)	c. Date and sold (Mo., day, yr.)	d. Gross sales price less expenses of sale	e. Cost or other basis, as figured (See instructions page 211)	f. LOSS if column (d) is more than (e) subtract (d) from (e)	g. GAIN if column (d) is more than (e) subtract (e) from (d)
1 CORP. BOND					449	
SEE SCH ATTACHED						130
2 Gain from sale or exchange of a principal residence held one year or less, from Form 2119, lines 7 or 11				2		
3 Enter your share of net short-term gain or (loss) from partnerships and fiduciaries				3		
4 Add lines 1, 2 and 3 in column f and column g				4	449	130
5 Combine line 4, column f and line 4, column g and enter the net gain or (loss)					5	319
6 Short-term capital loss carryover from years beginning after 1969					6	
7 Net short-term gain or (loss), combine lines 5 and 6					7	319

Part II Long-term Capital Gains and Losses—Assets Held More Than One Year

8						
9 Gain from sale or exchange of a principal residence held more than one year, from Form 2119, lines 7, 11, or 18				9		
10 Enter your share of net long-term gain or (loss) from partnerships and fiduciaries				10		
11 Add lines 8, 9 and 10 in column f and column g				11	158	144
12 Combine line 11, column f and line 11, column g and enter the net gain or (loss)					12	14
13 Capital gain distributions					13	
14 Enter gain, if applicable, from Form 4797, line 5(a)(1)					14	
15 Enter your share of net long-term gain from small business corporations (Subchapter S)					15	
16 Combine lines 12 through 15					16	14
17 Long-term capital loss carryover from years beginning after 1969					17	
18 Net long-term gain or (loss), combine lines 16 and 17					18	14

Note: If you have capital loss carryovers from years beginning before 1970, do not complete rest of form. See Form 4798 instead. Otherwise, complete this form on reverse.

Schedule A
(Form 1040)Department of the Treasury
Internal Revenue Service

ITEMIZED DEDUCTIONS

▶ Attach to Form 1040

1978

OMB No. 1545-0045

Your social security number

WILLIAM J. & HILLARY CLINTON

429/92/9947

Schedule A—Itemized Deductions

MEDICAL AND DENTAL EXPENSES (not compensated by insurance or otherwise) (See instructions)		CONTRIBUTIONS (See instructions)	
1 One-half (but not more than \$150) of insurance premiums for medical care. (Be sure to include in line 10 below)	0	21 a Cash contributions for which you have receipts, cancelled checks, etc.	1,233
2 Medicine and drugs	952	b Other cash contributions	
3 Enter 1% of Federal AGI Form 1040		22 Other than cash	
4 Subtract line 2 from line 1. If line 3 is more than line 2, enter zero	0	23 Carveaway from prior year	0
5 Enter balance of insurance premiums for medical care not entered on line 1	0	24 Total contributions (add lines 21a through 22). Enter here and on line 36	1,233
6 Other medical and dental expenses:		CASUALTY OR THEFT LOSS(ES) (See instructions)	
a Doctors, dentists, nurses, etc.	0	25 Loss before insurance reimbursement	0
b Hospitals	0	26 Insurance reimbursement	0
		27 Subtract line 26 from line 25	0
		28 Enter smaller of \$100 or amount on line 27	0
		29 Casualty or theft loss (subtract line 28 from line 27). Enter here and on line 37	0
7 Total (add lines 4 through 6c)	0	MISCELLANEOUS DEDUCTIONS (See instructions)	
8 Enter 2% of Federal AGI Form 1040	2,556	30 Union dues	0
9 Subtract line 8 from line 7. If line 8 is more than line 7, enter zero	0	31 Political Contributions	190
10 Total (add lines 1 and 9). Enter here and on line 32	0	PROFESSIONAL DUES	118
		BUSINESS TRAVEL	434
		BUSINESS PHONE	60
TAXES (See instructions)			
11 State and local income	2,160		
12 Real estate	638		
13 State and local gasoline (see gas tax tables)	74		
14 General sales (see sales tax tables)	361		
15 Personal property	66		
16 MAJOR PURCHASE SALES TAX DRIVERS LIC	0	32 Total (add lines 30 and 31). Enter here and on line 38	802
17 Total (add lines 11 through 16). Enter here and on line 34	3,299	SUMMARY OF ITEMIZED DEDUCTIONS A	
INTEREST EXPENSE (See instructions)			
18 a Home mortgage	4,467	33 Total medical and dental—line 10	0
b Credit and charge cards	378	34 Total taxes—line 17	3,299
19 BANKS & LOAN COMPANIES	722	35 Total interest—line 20	15,469
VALE UNIVERSITY	271	36 Total contributions—line 24	1,233
GREAT SOUTHWEST CO	10,131	37 Casualty or theft losses—line 29	0
		38 Total miscellaneous—line 32	802
		39 Total deductions (add lines 33 through 38)	21,303
		40 If you checked Form 1040, Filing Status box: 2 or 5, enter \$1,200; 1 or 4, enter \$1,200; 3, enter \$1,600	3,200
		41 Subtract line 40 from line 39. Enter here and on Form 1040	18,103
20 Total (add lines 10 and 19). Enter here and on line 35	15,969	NOTE: If line 40 is more than line 39, enter zero and see instructions of Tax Most Home Deductions.	

Schedules A & B—Itemized Deductions AND Interest and Dividend Income

1980

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040. ▶ See instructions for Schedules A and B (Form 1040).

03

Name(s) as shown on Form 1040

WILLIAM T. CANTON + HILLARY F. CANTON

Your social security number

4251525747

Schedule A—Itemized Deductions (Schedule B is on back)

Medical and Dental Expenses (not paid or reimbursed by insurance or otherwise) (See page 16 of instructions.)

- 1 One-half (but not more than \$150) of insurance premiums you paid for medical care. (Be sure to include in line 10 below.) ▶ 150
- 2 Medicine and drugs
- 3 Enter 1% of Form 1040, line 31
- 4 Subtract line 3 from line 2. If line 3 is more than line 2, enter zero
- 5 Balance of insurance premiums for medical care not entered on line 1
- 6 Other medical and dental expenses:
a Doctors, dentists, nurses, etc.
b Hospitals
c Other (itemize—include hearing aids, dentures, eyeglasses, transportation, etc.) ▶

- 7 Total (add lines 4 through 6) 150
- 8 Enter 3% of Form 1040, line 31
- 9 Subtract line 8 from line 7. If line 8 is more than line 7, enter zero
- 10 Total medical and dental expenses (add lines 1 and 9). Enter here and on line 33 150

Taxes (See page 17 of instructions.)

Note: Gasoline taxes are no longer deductible.

- 11 State and local income 8947
- 12 Real estate 211
- 13 General sales (see sales tax tables) 414
- 14 Personal property 71
- 15 Other (itemize) ▶

- 16 Total taxes (add lines 11 through 15). Enter here and on line 34 9622

Interest Expense (See page 17 of instructions.)

- 17 Home mortgage 1863
- 18 Credit and charge cards 213
- 19 Other (itemize) ▶ LMAC 301

- JAMES M. CANTON 9000
- JANE CANTON 175
- WILLIAM T. CANTON 305
- DAVID CANTON 305
- CANTON FUND 4250

- 20 Total interest expense (add lines 17 through 19). Enter here and on line 35 ▶ 1600

Contributions (See page 17 of instructions.)

- 21 a Cash contributions for which you have receipts or cancelled checks 4742
- b Other cash contributions (show to whom you gave and how much you gave) ▶

- 22 Other than cash (see page 17 of instructions for required statement)
- 23 Carryover from prior years
- 24 Total contributions (add lines 21a through 23). Enter here and on line 36 4742

Casualty or Theft Loss(es) (See page 18 of instructions.)

- 25 Loss before insurance reimbursement
- 26 Insurance reimbursement
- 27 Subtract line 26 from line 25. If line 26 is more than line 25, enter zero
- 28 Enter \$100 or amount from line 27, whichever is smaller
- 29 Total casualty or theft loss(es) (subtract line 28 from line 27). Enter here and on line 37

Miscellaneous Deductions (See page 18 of instructions.)

- 30 Union dues
- 31 Other (itemize) ▶ PROFESSIONAL FEES 415

- 32 Total miscellaneous deductions (add lines 30 and 31). Enter here and on line 38 ▶ 415

Summary of Itemized Deductions

(See page 19 of instructions.)

- 33 Total medical and dental—from line 10 150
- 34 Total taxes—from line 16 9622
- 35 Total interest—from line 20 1600
- 36 Total contributions—from line 24 4742
- 37 Total casualty or theft loss(es)—from line 29
- 38 Total miscellaneous—from line 32 415
- 39 Add lines 33 through 38 7409
- 40 If you checked Form 1040, Filing Status box:
2 or 3, enter \$3,400
1 or 4, enter \$2,300
3, enter \$1,700
- 41 Subtract line 40 from line 39. Enter here and on Form 1040, line 33. (If line 40 is more than line 39, see the instructions for line 41 on page 19.) 2830

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, MAY 16, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.
Would you stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. Thank you.

Mr. Latham, Mr. Knight, Mr. Bunch, if any of you have a statement you would like to make, we would be pleased to receive it.

[No response.]

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Just so we know who you are, Mr. Latham, in 1983, 1984, 1985, and 1986, you worked at Madison Guaranty Savings & Loan?

SWORN TESTIMONY OF JOHN M. LATHAM FORMER CEO & CHAIRMAN OF THE BOARD MADISON GUARANTY SAVINGS & LOAN

Mr. LATHAM. That's correct.

Mr. CHERTOFF. You started out as Executive Vice President and then you became Chief Executive Officer, right?

Mr. LATHAM. That's correct.

Mr. CHERTOFF. That was Jim McDougal's savings and loan?

Mr. LATHAM. That's correct.

Mr. CHERTOFF. He owned it?

Mr. LATHAM. Yes.

Mr. CHERTOFF. Mr. Knight, in the mid-1980's, you were a partner at the Rose Law Firm?

SWORN TESTIMONY OF DAVID A. KNIGHT FORMER PARTNER, ROSE LAW FIRM

Mr. KNIGHT. That's correct.

Mr. CHERTOFF. You still are?

Mr. KNIGHT. No, sir, I'm not.

Mr. CHERTOFF. Where are you now?

Mr. KNIGHT. I am the General Counsel of Stephens, Inc., in Little Rock.

Mr. CHERTOFF. If you would just pull the mike a little closer.

In the mid-1980's, when you were a partner at the Rose Law Firm, what was your area of specialization?

Mr. KNIGHT. Corporate and securities law.

Mr. CHERTOFF. Mr. Bunch, what is your job?

**SWORN TESTIMONY OF GARY W. BUNCH
PRESIDENT, MADISON BANK AND TRUST**

Mr. BUNCH. President of Madison Bank and Trust.

Mr. CHERTOFF. And just so we're clear, Madison Bank and Trust is obviously different than Madison Guaranty Savings & Loan?

Mr. BUNCH. Yes, it is. It's a bank.

Mr. CHERTOFF. All right. Mr. Bunch, you had that position at Madison Bank and Trust in the mid-1980's?

Mr. BUNCH. I was working at Madison Bank and Trust in the mid-1980's, yes, sir.

Mr. CHERTOFF. When did you start working at Madison Bank?

Mr. BUNCH. 1970.

Mr. CHERTOFF. Were you there when Jim McDougal owned the Madison Bank?

Mr. BUNCH. Yes, I was.

Mr. CHERTOFF. And you stayed after he left?

Mr. BUNCH. Still there.

Mr. CHERTOFF. Now, I would like to focus your attention first on an issue about which this Committee and our country has heard a lot of conflicting testimony. And although it looks sometimes as if it is a small piece of the puzzle, it is actually a very fundamental piece of the puzzle because it explores how it is that the Rose Law Firm became involved in doing work for Madison Guaranty Savings & Loan.

I want to set the picture before I ask you any questions by putting up on the Elmo a portion of an answer to an interrogatory given by Mrs. Clinton to the RTC under oath within the last couple of years. It's numbers on the bottom are DKS N 800 and DKS N 801. I think you all have it in your package, and I will give you a minute to find it. It's a couple of typewritten pages. Actually, I am going to have someone come down and just hand it to you, make it a little easier.

This was a question that the RTC, as part of its investigation into the Rose Law Firm and its relationship with Madison Guaranty, felt it necessary to ask the First Lady.

Question: Was Mrs. Clinton the lawyer responsible for obtaining this business for the Rose Law Firm?

Answer: To the best of my recollection, the President of Madison Guaranty, John Latham, who was a friend of an associate at the Rose Law Firm, Richard Massey, became interested in having Madison Guaranty issue some kind of preferred stock to raise capital. Mr. Latham had spoken to Massey about doing the related legal work. In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the law firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill, and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees

and expenses. Under such an arrangement, the firm could be assured that Madison Guaranty was staying current with regard to paying for the new work that the firm might do for it.

I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him. I agreed to go see McDougal. I visited him at his office on April 23, 1985, and told him that I understood Latham wanted Massey to do some work for Madison Guaranty, but that our firm would not let Massey proceed until the previous bill was paid and some kind of prepayment arrangement was worked out for new work the firm might do. As I recall, McDougal agreed that Massey could proceed with the work and informed me he would arrange to pay the past due bill. McDougal also indicated that he was agreeable to some kind of prepayment arrangement.

Now, Mr. McDougal, at various times gave the public a different version. McDougal's version was that he made a decision to give the work to the Rose Law Firm. I'm operating from memory. That he made a decision to give the work to the Rose Law Firm because it was in response to a request from President Clinton, who had visited him.

When we asked Mr. Massey whether he agreed with Mrs. Clinton's recollection that it was Massey who was the one who brought the work in and that Mr. Massey went to Mrs. Clinton simply to straighten out the problem of a past due bill, Mr. Massey had a different recollection.

Mr. Massey had a recollection of having lunch with Mr. Latham, but his recollection was that at the end of the lunch, he didn't come away with any promise or indication that you, Mr. Latham, wanted to have the Rose Law Firm do work. So his recollection was that he did not come to Mrs. Clinton with—

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Should we put the testimony of these people in front of Mr. Latham if you're going to use this?

The CHAIRMAN. Senator and Mr. Ben-Veniste, let me just say, Mr. Chertoff has indicated he is trying to set a framework of the background where there's given testimony. He's attempting to summarize so that after he gives the background, come to the specifics in light of these things, and he can then ask his questions. You will have an opportunity, if there are misstatements or an overstatement, to deal with him, but let him proceed.

Senator SARBANES. I don't mind him trying to set a background, but if he's going to say that so and so said such and such and so and so has been before us saying such and such, shouldn't we reference the witness to the testimony and let him look at it?

Mr. CHERTOFF. I am not citing, Mr. Chairman, from these witnesses testimony. I am setting out a framework as to what others have said. I will tell you and the witnesses quite specifically, that when Mr. Massey was asked point blank whether Mr. Latham had offered him work for Madison Guaranty Savings & Loan, Mr. Massey's answer, and I am quoting from page 19 of his testimony before this Committee on January 11th of this year was, "I don't believe so." So we have these different stories.

We do know that there was a lunch that occurred at some point in early 1985, between Mr. Massey and Mr. Latham and I believe you too, Mr. Knight. Is that correct?

Mr. KNIGHT. Yes, sir. I am not sure as to the precise date but I did attend that lunch.

Mr. CHERTOFF. Would you tell us now, Mr. Knight, what your recollection is of that lunch?

The CHAIRMAN. Could we have a date?

Mr. CHERTOFF. Well, I can't do any better than just——

The CHAIRMAN. On or about?

Mr. CHERTOFF. The best we can determine was that it was some time in early 1985.

The CHAIRMAN. OK.

Mr. KNIGHT. I am not sure about that, sir, as to the date, but I did go to the lunch.

Mr. CHERTOFF. Would you tell us what happened at the lunch?

Mr. KNIGHT. The lunch followed the conclusion of a law school course that Mr. Massey and I were teaching, and Mr. Latham was a student in that class. The purpose of the lunch was to solicit business from Madison Savings & Loan.

Mr. CHERTOFF. What happened?

Mr. KNIGHT. We took Mr. Latham to lunch, and I can't remember certainly the specific conversation but the gist of it was we told him a little bit about the types of work that Rick and I did. Representative clients for the firm, and then asked him for business.

Mr. CHERTOFF. What did he say?

Mr. KNIGHT. My recollection is that he said that Mr. McDougal was really the one that made decisions about hiring lawyers.

Mr. CHERTOFF. What else did he say?

Mr. KNIGHT. He also said that Madison regularly used another law firm and that he thought they were satisfied with the services provided by the law firm.

Mr. CHERTOFF. Which law firm was that?

Mr. KNIGHT. The Mitchell Law Firm.

Mr. CHERTOFF. That would be the firm with Jim Guy Tucker as a partner?

Mr. KNIGHT. Yes, that's correct.

Mr. CHERTOFF. And John Selig as a partner?

Mr. KNIGHT. Yes.

Mr. CHERTOFF. So in this meeting, at this lunch, Mr. Latham told you it was Mr. McDougal's decision, correct?

Mr. KNIGHT. Yes.

Mr. CHERTOFF. He told you that the bank already had an outside firm that it was happy with?

Mr. KNIGHT. Yes.

Mr. CHERTOFF. That was not your firm.

Mr. KNIGHT. That's correct.

Mr. CHERTOFF. And would you agree with me that he wasn't encouraging at all about your law firm getting any work from Madison Guaranty Savings & Loan?

Mr. KNIGHT. That's correct.

Mr. CHERTOFF. So when you left that lunch, you had no impression from Mr. Latham that you were going to be getting any business from Madison Guaranty Savings & Loan?

Mr. KNIGHT. That's correct.

Mr. CHERTOFF. In fact, as far as securities work was concerned, that was your particular specialty at the Rose Law Firm, right?

Mr. KNIGHT. Yes, sir, corporate and securities.

Mr. CHERTOFF. That was your area.

In this lunch, did Mr. Latham say to you anything about having a securities project or some kind of project involving the issuance of preferred stock that he wanted your firm to work on?

Mr. KNIGHT. No, sir, I don't recall any discussion about such an offering.

Mr. CHERTOFF. During the course of this lunch, did you make a request to see whether you could meet with Mr. McDougal?

Mr. KNIGHT. No, sir, I did not.

Mr. CHERTOFF. So when you left that lunch, you walked away with the impression that you had no opportunity with Madison Guaranty Savings & Loan?

Mr. KNIGHT. At least at that point, sir.

Mr. CHERTOFF. When was the next time that you heard about Madison Guaranty Savings & Loan in connection with work that the Rose Law Firm would be doing?

Mr. KNIGHT. I'm not sure as to a specific date but at some point, I learned that Rick Massey was working on a recapitalization plan for Madison that had been brought to the firm.

Mr. CHERTOFF. You don't know how it came to the firm, do you?

Mr. KNIGHT. No, I do not.

Mr. CHERTOFF. Do you remember after the lunch, when you came away with no sense that you were going to get any business from Madison Guaranty Savings & Loan, did you say anything to Mr. Massey in the wake of the lunch about what your impression was?

Mr. KNIGHT. I have a vague recollection just discussing it with him briefly on our way back to the office, and I think maybe pointing out my observation that when a large company or a financial institution has a large outside law firm that they use as a regular firm and they are satisfied with the firm, that it is typically very hard to get business from that company. And that would have been the substance of it.

Mr. CHERTOFF. So when you left that lunch—and this is consistent with Mr. Massey's testimony—you had no sense that you had been given any kind of offer or request from Madison Guaranty Savings & Loan to do work for them?

Mr. KNIGHT. That's correct.

Mr. CHERTOFF. To the contrary, your belief was that the matter was closed?

Mr. KNIGHT. As far as I was concerned, sir.

Mr. CHERTOFF. As a matter of fact, I don't know if you know this, but there is evidence that with respect to the very stock recapitalization matter that eventually did come to the Rose Law Firm, that matter was originally opened by Madison Guaranty Savings & Loan with the Mitchell Williams firm, the firm's regular outside counsel. Did you know that?

Mr. KNIGHT. No, sir, I did not.

Mr. CHERTOFF. That fact, I take it, would tend to reinforce your impression that if a firm has already been engaged by a bank to work on a project and they are the regular outside firm for the bank, they are not likely to switch it, unless there's some unusual event, to a firm that they haven't worked with before?

Mr. KNIGHT. Yes, I think that's a fair statement.

Mr. CHERTOFF. Now, Mr. Latham, do you have a recollection of this lunch that is different from that which Mr. Knight has testified about?

Mr. LATHAM. No. I don't remember the lunch. David and I were talking about that earlier and laughing about it but I do not remember the lunch with them, no.

Mr. CHERTOFF. You would agree with me that the decision about hiring law firms during this period of time for Madison Savings & Loan in your mind was a decision that Jim McDougal made?

Mr. LATHAM. Yes.

Mr. CHERTOFF. So that even though you were the Chief Executive Officer, you believe and you were operating under the principle that this was the kind of decision Jim McDougal would make?

Mr. LATHAM. Yes. He had been using lawyers for awhile. He owned the firm or the S&L, and I felt that the hiring of lawyers to represent you is you usually hire lawyers that you know and trust. And I felt that that should be his call on who we used.

Mr. CHERTOFF. Given that you don't remember the lunch, let me ask you this. Do you know who did make the decision to hire the Rose Law Firm?

Mr. LATHAM. Jim McDougal did.

Mr. CHERTOFF. Do you know why he made that decision?

Mr. LATHAM. No, I don't. I mean, I can't speak for Jim.

Mr. CHERTOFF. Did he tell you something?

Mr. LATHAM. My recollection, and this is a vague recollection at this point in time, is that—well, and I don't know if he said it or if I just knew it—but I knew that he had friends at the Rose Law Firm and Hillary Clinton, of course, was one of them, and we either discussed it, or that was my assumption that he was wanting to spread his business with more of his friends, yes.

Mr. CHERTOFF. Now the second piece of this puzzle, apart from the question of whether or not Mr. Massey, as the response to the interrogatory indicates, came in with some work, and I guess the testimony we have now from Mr. Knight, Mr. Latham, and Mr. Massey is that Mr. Massey didn't have any work to come to Mrs. Clinton about.

The second piece of this is Mrs. Clinton's statement that the reason she got involved in this was because she had to get McDougal to pay off an outstanding bill for work that the law firm had done for Madison Bank and Trust, which had been Mr. McDougal's earlier financial institution before he moved to Madison Guaranty Savings & Loan. So that raises the question about whether there was, in fact, an outstanding bill or billing dispute with Madison Bank and Trust and the Rose Law Firm as of April 1985. And that's what I want to ask you about, Mr. Bunch.

Mr. Bunch, you had an opportunity during your deposition or during recent interviews, to look at some minutes and some documents of the Board of Directors of Madison Bank and Trust?

Mr. BUNCH. Yes, I did.

Mr. CHERTOFF. I think you have those in the package in front of you. Let me ask you, was there an outstanding bill that was owed from Madison Bank and Trust to the Rose Law Firm in the summer of 1984?

Mr. BUNCH. Yes.

Mr. CHERTOFF. Was it in the amount of approximately \$5,800?

Mr. BUNCH. Yes.

Mr. CHERTOFF. And did there come a time that Jim McDougal directed you or indicated that he wanted the bank to pay that bill and settle that matter?

Mr. BUNCH. Yes.

Mr. CHERTOFF. When was that?

Mr. BUNCH. I believe it was in October.

Mr. CHERTOFF. Actually, would it be September 25, 1984? I am sorry, October you say?

Mr. BUNCH. I thought it was October.

Mr. CHERTOFF. Let me help you out. You may be right. There's a document, it's been faxed to us.

Mr. BUNCH. Well, I guess it was September, and then October, December, we have another meeting showing it was paid, so—

Mr. CHERTOFF. You need to speak closer to the microphone.

Mr. BUNCH. OK. I can't really see the date on this.

Mr. CHERTOFF. All right. Let me direct your attention to a particular page. It's a page that has at the top 273 PO3 May 14, 1996, 13:39, and the first line reads "Thornton requested letter in detail on Cease and Desist Compliance."

Mr. BUNCH. Yes.

Mr. CHERTOFF. You have that?

Mr. BUNCH. Yes, I do.

Mr. CHERTOFF. That is part of a report relating to the October Board Meeting, is that right?

Mr. BUNCH. That's correct.

Mr. CHERTOFF. These are documents that you're familiar with. In fact, you've had them in your possession?

Mr. BUNCH. Yes.

Mr. CHERTOFF. Direct your attention down to three paragraphs from the bottom, it says, "Law Firm. We owe \$5,000 for Huntsville move appeal according to firm. Discuss the fact that new lawyers sent to argue case." Then it says, "Mr. McDougal seconded that Mr. Bunch will negotiate settlement with firm." Is this the October Board Meeting in which Mr. McDougal indicated that this bill was to be paid?

Mr. BUNCH. Yes.

Mr. CHERTOFF. So that the agreement or decision by McDougal to pay the bill was in October 1984, about 7 months before April 1985. Is that correct?

Mr. BUNCH. I suppose.

Mr. CHERTOFF. Now there is also another document you sent us which says, Debit General Ledger, Account Number 76011. Why don't you get that?

Mr. BUNCH. Pardon me?

Mr. CHERTOFF. It says, Debit General Ledger, Account Number 76011. Why don't you take a look at that?

Mr. BUNCH. Yes, I am.

Mr. CHERTOFF. Is this the part of the ledger record of the bank concerning its disbursements?

Mr. BUNCH. Yes, it is.

Mr. CHERTOFF. Does this indicate that on October 23, 1984, \$5,000 in legal fees were, in fact, paid to the Rose Law Firm which

was in your mind, your understanding, payment in full for the outstanding legal fees?

Mr. BUNCH. Yes. It's \$5,000 that was paid—I am assuming—we never did find the cancelled check or cashier's check or anything—that was paid to Rose, but I'm assuming yes, that it was paid.

Mr. CHERTOFF. Because you have a record of the payment and you have a record of the Board of Directors that indicated you were supposed to pay that?

Mr. BUNCH. That's correct.

Mr. CHERTOFF. In fact, to further confirm that, I want to turn to the last document in the minutes. It's the minutes of a November 27, 1984 meeting. If you can pull that out.

Mr. BUNCH. Got it.

Mr. CHERTOFF. The last paragraph says, "The Daily Statement was read, reviewed, and approved unanimously. It was noted that earnings were \$69,048 with an L/D Ratio of 51 percent and the Capital Ratio of 7.6 percent. The reduction in earnings was attributed to heavy accounting fees for the audit and a payment of legal fees from 1983 lawsuit."

Mr. BUNCH. That's correct.

Mr. CHERTOFF. Does this refer to that \$5,000 payment?

Mr. BUNCH. Yes.

Mr. CHERTOFF. So these records, the minutes, and the debit indicate that so far as we have records, there was, in fact, the payment and the satisfaction of this particular bill in October 1984.

Mr. BUNCH. That's correct.

Mr. CHERTOFF. And I might add, just to further confirm that, that we have documents we received very recently from the Rose Law Firm and, in fact, they came after the Committee suspended in late February 1996, that indicates what they call a fee/credit report. It indicates a distribution among the partners for, "credit purposes," of this \$5,000 payment and that that occurred in November 1984. So that's fully consistent with your testimony and with these other records.

Mr. Bunch, your understanding was, your instruction from Mr. McDougal in October was to settle up this bill in full?

Mr. BUNCH. Yes, it was.

Mr. CHERTOFF. Do you remember who you talked to at the law firm about doing that?

Mr. BUNCH. No, I do not.

Mr. CHERTOFF. But you satisfied yourself that you had accomplished what you were told to do?

Mr. BUNCH. Yes.

Mr. CHERTOFF. That the bill was paid in full in either October or November?

Mr. BUNCH. That's correct.

Mr. CHERTOFF. You never heard anything to the contrary?

Mr. BUNCH. No.

Mr. CHERTOFF. Mr. Knight, were you interviewed by the Pillsbury Madison people working for the RTC on the investigation of Madison Guaranty Savings & Loan?

Mr. KNIGHT. No, sir.

Mr. CHERTOFF. Mr. Bunch, were you interviewed by the Pillsbury Madison people?

Mr. BUNCH. Not that I remember.

Mr. CHERTOFF. Mr. Latham, were you interviewed by the Pillsbury Madison people?

Mr. LATHAM. No, sir.

Mr. CHERTOFF. Now, I'd like to move to another subject, if I can, with you, Mr. Latham, and that has to do with a transaction in the fall of 1985 and early 1986 involving property that had at one point been known as the IDC property and ultimately became the Castle Grande project. Are you familiar with that set of transactions?

Mr. LATHAM. Yes, I am.

Mr. CHERTOFF. I know there's a lot on the record on this; I'm not going to get into detail, but as long as you are here, we ought to get this from you. Would you agree with me that the way that initial purchase was structured in the fall of 1985, was that the entire tract of property was split into two parts. That Seth Ward took a piece of that property in his own name as a straw man, using money that had been lent to him by Madison Guaranty Savings & Loan, and that the balance of the property was taken by Madison Financial, which was a subsidiary of Madison Guaranty Savings & Loan? Is that generally what happened?

Mr. LATHAM. I don't know what you mean by straw man. I will agree with everything else except that term. Yes, that is true.

Mr. CHERTOFF. You don't know what the term straw man means?

Mr. LATHAM. I am not sure what you mean by the term straw man.

Mr. CHERTOFF. What I mean, Mr. Latham, is that he purchased part of the property on behalf of Madison because Madison could not have purchased the whole property itself because it would have been in violation of regulations had it done so.

Mr. LATHAM. My recollection is there was more than one reason for Seth to purchase part of that tract of land. I don't know that I can remember all of them now, but they read them to me in my deposition from a statement I had made to the RTC last year.

One was that I think Seth and Jim and everybody else that I heard talk about that transaction, believed that what they were buying, what Seth put together was a steal, and that they were buying the property at an immense bargain. Seth is not one to turn down a profit anywhere.

It's true—well, I'm going from memory but I would assume that we probably did not have the room to increase or to buy the entire investment in the service corporation, and so for that reason and the others that I may not be remembering right now that I stated to the RTC, are the reasons I remember for splitting that transaction in that manner.

Mr. CHERTOFF. Well, let me refresh your memory by going back to the first couple of times you testified about the transaction under oath. You have in your package your oral deposition, which is a sworn statement given in a case in Arkansas in 1987, *Ward v. Madison Guaranty*. This was a dispute between the bank and Ward over an amount that he was claiming he was owed as a commission. Do you remember that case, Mr. Latham?

Mr. LATHAM. Yes.

Mr. CHERTOFF. Who actually called you as a witness in that case, Mr. Ward or the bank?

Mr. LATHAM. Madison did.

Mr. CHERTOFF. Let me direct your attention to your oral deposition at page 7, line 11.

Mr. LATHAM. Page 7?

Mr. CHERTOFF. Yes. It's your oral deposition on page 7.

Mr. LATHAM. Yes.

Mr. CHERTOFF. Line 8:

Question: Were there regulations that prohibited Madison Financial Corporation from making that large of a purchase?

Answer: Yes.

Question: So it would have been in violation of those regulations for Madison Financial Corporation to have purchased the entire tract of land?

Answer: I think at that time, that would have been a problem.

Question: Do you recall how Mr. Ward's part of the purchase was financed?

Answer: I believe Madison Savings & Loan made him a loan on it.

Was that testimony true?

Mr. LATHAM. Yes.

Mr. CHERTOFF. I want to direct you to your trial testimony in the very same case, page 95. I'm referring to the page number in the top right hand corner, line 15:

Question: Was that purchase divided between Madison Financial Company and Seth Ward?

Answer: Yes.

Question: Why?

Answer: At the time, I don't believe the service corporation, that is, Madison Financial, was able to, under the regulations, buy the entire tract. It was a piece of land that both Seth Ward and Jim McDougal were very interested in, and thought that it would make an excellent development, and Seth took one half of it roughly and Madison Financial, the service corporation, bought the other half.

Then we continue on to the next page, 96, line 6:

Question: Now, you said that there were regulations that limited what Madison Financial Corporation could invest in. At this time, was Madison Financial close to the limit of investment?

Answer: I believe it was at that time, yes.

Was your testimony true in this?

Mr. LATHAM. Yes.

Mr. CHERTOFF. Finally, I want to direct your attention to a page from a response to interrogatory in this very case that was the response provided by Madison Guaranty Savings & Loan. Were you contacted by lawyers in Madison Guaranty Savings & Loan to get information from them when they prepared to defend this case against Seth Ward?

Mr. LATHAM. Yes, I was.

Mr. CHERTOFF. We were not able to get the entirety of these documents, but we do have page 12 of the interrogatories, and it indicates that the Savings & Loan, took the following position in 1987:

With knowledge, the plaintiff [Seth Ward] agreed to purchase a section of the undeveloped property in his name so that Madison Financial Corporation would not exceed its investment limitation imposed by the FHLBB of 6 percent of the assets of the corporation.

In effect, plaintiff [again, Seth Ward] acted as a straw man for the real estate purchase for the mutual benefit of himself, Jim McDougal, and other individuals.

Now were you shown these interrogatories during the course of the case?

Mr. LATHAM. I may have been. I do not remember seeing them.

Mr. CHERTOFF. You do not remember. Do you remember that there came a point in time that an option was executed between

Mr. Ward and Madison regarding—actually, I see the yellow light is on and it is going to take a few minutes to develop this area of inquiry, let me stop and I'll pick it up when we return.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, gentlemen.

Let me start by asking you, Mr. Latham, whether it is correct that you have been interviewed and have given a statement to the Resolution Trust Corporation?

Mr. LATHAM. Yes.

Mr. BEN-VENISTE. And while you were not interviewed by Pillsbury Madison & Sutro, they were working for the Resolution Trust Corporation, were they not?

Mr. LATHAM. I don't know.

Mr. BEN-VENISTE. That was their client. In any event, there was a point during which the Independent Counsel, to your knowledge, expressed a desire that nobody further interview you? Are you aware of that?

Mr. LATHAM. I think I've read or heard that, but I've not had—

Mr. BEN-VENISTE. The communication of the Independent Counsel and this Committee was that you could not be interviewed until very recently, that is, the time of your deposition, so it's not at all mysterious that the Pillsbury firm might not have gotten around to interviewing you under those circumstances.

Now, Mr. Knight, you were not involved, were you, in the actual representation of Madison Savings & Loan back in 1985?

Mr. KNIGHT. I might have done some very minor work on it, but I really wasn't actively involved in it, no, sir.

Mr. BEN-VENISTE. Indeed, when Mr. Massey testified before this Committee, I have to say, and it's nothing derogatory toward you or your presence, but he did not remember that you were present at the lunch with Mr. Latham, and did not mention that you were present. Mr. Latham, do you remember a lunch with Mr. Knight being present?

Mr. LATHAM. No, I don't.

Mr. BEN-VENISTE. So it may have been that there were more than one lunch and more than one meeting between Mr. Latham and Mr. Massey. Would you rule that out, Mr. Latham?

Mr. LATHAM. I have no recollection of it so I can't rule it out.

Mr. BEN-VENISTE. And of course, one might not fault you for having a failure of recollection. These events occurred 11 years ago and presumably were not central to your life at that time. Is that correct, Mr. Latham?

Mr. LATHAM. That's correct.

Mr. BEN-VENISTE. Mr. Knight, would that be fair to say?

Mr. KNIGHT. Yes, sir.

Mr. BEN-VENISTE. Now, Mrs. Clinton, in her interrogatory answers, indicated that there was a problem with respect to an outstanding bill that had not been paid by Mr. McDougal or one of his entities, prior to the work that the Rose Law Firm did for Madison Guaranty Savings & Loan. Are you aware of that?

Mr. KNIGHT. Yes, sir.

Mr. BEN-VENISTE. Let's get your recollection. Is it not the case that prior to your lunch pitching the business to Mr. Latham, that

you met with the senior partner of the Rose Law Firm about the anticipated lunch that you were going to have, during which you were going to pitch the Madison Savings & Loan business?

Mr. KNIGHT. Well, sir, I would not describe it as a meeting. I think I just basically walked into his office and mentioned to him that Rick and I were going to go have lunch with Mr. Latham and see if there was any possibility of doing business there.

Mr. BEN-VENISTE. And Mr. Giroir, was it?

Mr. KNIGHT. Giroir.

Mr. BEN-VENISTE. Mr. Giroir mentioned to you at that time, did he not, that there was an outstanding balance on the Madison Bank account with the firm?

Mr. KNIGHT. No, sir, that is not my recollection. All I can really recall about that is he mentioned to me that there had been some sort of a billing problem on work that had been done by the litigation section, and I don't believe he went into any detail about the specific nature of the problem.

Mr. BEN-VENISTE. Did Mr. Giroir say, in substance, that there had been a dispute or some kind of argument about fees with respect to Mr. McDougal and the Rose Law Firm and that that had to do with some past representation of Madison?

Mr. KNIGHT. Yes, sir. He said something to that general effect.

Mr. BEN-VENISTE. So that was very much up front and clearly on the mind of the senior partner at the Rose Law Firm at the time when you mentioned Mr. McDougal and Madison Savings & Loan?

Mr. KNIGHT. He did mention it to me, yes, sir.

Mr. BEN-VENISTE. Now it is also correct that prior to the representation of the firm of this new client, Madison Guaranty Savings & Loan, a substantial portion of the outstanding bill was cleaned up. You now know that, do you not?

Mr. KNIGHT. At the time, sir, I did not have any knowledge of that. That is my understanding certainly based on what we've seen here today.

Mr. BEN-VENISTE. We now know that at some point apparently in late 1994, that \$5,000 was paid toward that outstanding bill.

Mr. KNIGHT. Yes, sir, that appears to be the case.

Mr. BEN-VENISTE. Mr. Bunch, and again I don't mean to imply that you should necessarily have a specific recollection of this, but is it correct that the Rose Law Firm had been trying to collect on that bill for representation of your bank since 1982?

Mr. BUNCH. I'm sure they had sent us some bills, yes.

Mr. BEN-VENISTE. Well, let me put before you a letter dated October 10, 1983, and this has been Bates stamped 9179. Can we do that? You see a letter dated October 10, 1983?

Mr. BUNCH. Yes.

Mr. BEN-VENISTE. That letter is addressed to Mr. McDougal and it's signed by C.J. Giroir, Jr., the senior partner at the Rose Law Firm at the time. And that letter says:

Dear Jim, pursuant to your discussion with Hillary Rodham Clinton, I am enclosing herewith a copy of our firm's statement, dated December 23, 1981, covering services rendered in connection with the matter of *First National Bank of Huntsville v. Madison Bank and Trust*.

Very truly yours, Joe Giroir.

So you acknowledge that from time to time there had been attempts to secure payment of this outstanding bill, and indeed according to Mr. Giroir's letter, Mrs. Clinton had been aware of and involved in that process?

Mr. BUNCH. Yes.

Mr. BEN-VENISTE. Now with respect to the notes that have been shown of a Board meeting at Madison Bank in October 1984, it says, "Mr. Bunch will negotiate settlement with the Rose Firm." And those were the notes that were shown to you previously. Do you have a specific recollection of negotiating with anybody at the Rose Firm?

Mr. BUNCH. No. I don't remember it.

Mr. BEN-VENISTE. Again that is not surprising, that was 11 years ago. But in any event, \$5,000 was paid on that account at some point toward the end of 1984?

Mr. BUNCH. That's correct.

Mr. BEN-VENISTE. Let me, in order to put into a little better context the testimony of Mr. Massey before this Committee on January 11, 1996, when I questioned him, I asked him:

Mr. BEN-VENISTE. And it was your hope, was it not, that Mr. Latham and the Madison Bank would consult you on an official basis in your private capacity as a lawyer with the Rose Law Firm?

Mr. MASSEY. Yes, sir. As I testified earlier, I actually pitched the business to him. I think the pitch was basically, gee, I'm—you are asking me all these questions. Why don't you hire us and put us to work on some of these things.

Let me stop there. Mr. Latham, when you were asked about Mr. Massey and his pitch, I don't think you recalled that he was teaching a course at that point that you were taking at the law school? You seem to think that you were all in law school studying for the Bar together?

Mr. LATHAM. At the same time; that's correct.

Mr. BEN-VENISTE. Right. So Mr. Massey's recollection seems to be a little more specific, but he said that you were being pitched on specific matters, and that had to do, according to Mr. Massey's testimony, with the regulatory issues that eventually Rose was hired to handle. Correct?

Mr. LATHAM. It's correct that that is what Rick said?

Mr. BEN-VENISTE. Well, do you recall that?

Mr. LATHAM. No, I do not recall that.

Mr. BEN-VENISTE. You don't recall that. Do you recall that Mr. Latham was being pitched, Mr. Knight, for business?

Mr. KNIGHT. Yes, I do recall having a lunch and doing that, and I recall Mr. Massey being present at that lunch.

Mr. LATHAM. Let me back up and say that I do recall that Rick pitched the business in the sense that he wanted us to hire them to do legal work for us. I do not remember the lunch. I do not remember us—I do not remember being in a class that Rick was teaching, but I do remember him pitching business, yes.

Mr. BEN-VENISTE. Fair enough. And to go on with Mr. Massey's testimony, I asked him:

Mr. BEN-VENISTE. So very clearly you had it in mind that all of this advice would lead someday to signing up by the Rose Law Firm of this bank client?

Mr. MASSEY. I had hoped that, yes, sir.

Mr. BEN-VENISTE. Indeed, Mr. Latham told you in words or substance that he wouldn't object to that kind of relationship but it was not his decision to make?

Mr. MASSEY. That was the sense I got from the meeting, yes, sir.

Mr. BEN-VENISTE. And if I understand your testimony, you may have had a casual conversation with Mrs. Clinton about these circumstances, knowing that she was acquainted with Mr. McDougal?

Mr. MASSEY. Yes, sir, very possibly.

Mr. BEN-VENISTE. Mr. McDougal was the person to whom Mr. Latham referred as the decisionmaker on retaining a client?

Mr. MASSEY. That's correct.

Mr. BEN-VENISTE. So putting all of this together, there's no real mystery, is there, that there was an issue relating to securities work that you were being consulted on, on an informal basis, by Mr. Latham about that work, that you wanted to regularize that relationship to be an attorney-client relationship between the Rose Firm and the bank, that you may have mentioned it to Mrs. Clinton and that eventually the Rose Firm was retained by the bank to provide the service?

Mr. MASSEY. Yes, sir.

That is not inconsistent with the recollection you have, to the extent you have a recollection of those events, is it, Mr. Latham?

Mr. LATHAM. No, it is not.

Mr. BEN-VENISTE. The fact that Madison Savings & Loan was using another law firm as its principal outside firm has all been testified to here before, and indeed that lends credence to the notion that the Rose Firm had a very limited role in representing Madison Savings & Loan back in 1985.

We understand from the records that we have accumulated that the firm received approximately \$22,000 in fees over an 18-month period. Is that consistent with your recollection, Mr. Latham?

Mr. LATHAM. I can't dispute it—the only recollection that I have of working with the Rose Firm was on the broker-dealer matter. The billing records, in my understanding, indicate that they have worked on several other matters, and I do not dispute that.

Mr. BEN-VENISTE. There were other matters, yes, and we have been through all those with the members of the firm, the partners who have come here to testify, I think three in number. Do you have any reason to believe that the Rose Firm was paid for work that was not performed?

Mr. LATHAM. No. I have no reason to believe that.

Mr. BEN-VENISTE. Mr. Knight, do you have any such reason to believe that the Rose Firm was paid as some kind of gratuity or gift, rather than for legal services performed?

Mr. LATHAM. No, sir.

Mr. BEN-VENISTE. The \$22,000 over an 18-month period, how would you characterize that in terms of whether that was a significant amount of business for the Rose Firm during 1985?

Mr. KNIGHT. That would be a relatively small matter for a corporate area.

Mr. BEN-VENISTE. Now is it correct that really the only thing that you have any recollection about in connection with the representation by the Rose Firm of Madison Savings & Loan and how the business came in was this limited recollection about the lunch that you had back in 1984 or 1985?

Mr. KNIGHT. I do remember the lunch. I think as I said earlier, I also generally remember learning that business was in-house. I just don't know how it arrived.

Mr. BEN-VENISTE. And if I understand your testimony correctly, you don't recall what matter you worked on back then, but you think you may have worked on some minor aspect of some matter?

Mr. KNIGHT. Yes, sir. During the course of previous testimony, I reviewed some billing records, and I had one or two small entries

where it appeared that Rick Massey had asked me to look over a document for him. I just really don't recall having done that.

Mr. BEN-VENISTE. You didn't have any independent recollection, but when you went back and looked at the billing records, it indicated that you had put in some small amount of time, and you're prepared to say that you must have, if the records said that?

Mr. KNIGHT. That is correct, sir.

Mr. BEN-VENISTE. OK. Fair enough.

Now, Mr. Bunch, there isn't any suggestion, is there, that the \$5,000 that was paid in late 1984, according to these records, was some kind of a gift to the Rose Law Firm?

Mr. BUNCH. No. Rose did the appeal.

Mr. BEN-VENISTE. They had worked on an appeal? Do you know which lawyers at the Rose Firm worked on that appeal?

Mr. BUNCH. I believe, from the documents, Mr. Foster.

Mr. BEN-VENISTE. Do you have any reason to believe that Mrs. Clinton was in any way involved in that appeal?

Mr. BUNCH. Not that I know of.

Mr. BEN-VENISTE. Did you work with Mr. Foster in connection with that appeal?

Mr. BUNCH. No. We had a bank attorney, a local attorney, that did most of that.

Mr. BEN-VENISTE. So in terms of the fee dispute that has been talked about, the services were incurred in 1981, I believe; correct?

Mr. BUNCH. I believe that's correct.

Mr. BEN-VENISTE. The bill was ultimately paid, or the outstanding balance on the bill was ultimately paid in 1984, it appears, toward the end of the year? Is that correct?

Mr. BUNCH. Well, yeah. We agreed on a \$5,000 settlement, yes.

Mr. BEN-VENISTE. The whole bill was \$5,000-and-change?

Mr. BUNCH. I don't think the bill was really disputed; it was just that we were a little slow in paying.

Mr. BEN-VENISTE. Like 3 years?

[Laughter.]

Mr. BUNCH. On that order.

Mr. BEN-VENISTE. There is no suggestion, is there, that you felt that you didn't owe the money?

Mr. BUNCH. No, no.

Mr. BEN-VENISTE. The work was performed?

Mr. BUNCH. That's correct.

Mr. BEN-VENISTE. You might not have gotten the result that you wanted—I don't even know what the appeal was about——

Mr. BUNCH. Well, that's true.

Mr. BEN-VENISTE. —or any of that arcania back in 1981, but you were a little slow in paying because you didn't get a great result, I guess?

Mr. BUNCH. Correct.

Mr. BEN-VENISTE. And for other reasons?

Mr. BUNCH. Well, mostly because of result, I am sure; yeah. We weren't in any hurry.

Mr. BEN-VENISTE. You weren't in any hurry.

Mr. BUNCH. Obviously.

Mr. BEN-VENISTE. I think we can all agree on that. Some of us up here are lawyers and are familiar with that syndrome, and Sen-

ator Bennett always takes the client's view so he would be on the same page as you if he were here today, I am sure, in terms of the speed with which legal bills are sometimes requested to be paid and the resulting action by the client. But there was nothing untoward about the fact that the bill was ultimately paid?

Mr. BUNCH. No. That's correct.

Mr. BEN-VENISTE. Do you recall any discussions with McDougal from your own recollection as opposed to looking at records regarding the payment of the outstanding balance of that bill?

Mr. BUNCH. No, I do not.

Mr. BEN-VENISTE. So it wasn't any major event?

Mr. BUNCH. No.

Mr. BEN-VENISTE. Mr. Latham, it is correct, is it not, that Mr. McDougal was the one to make the decision concerning the matter about which Mr. Massey and apparently Mr. Knight pitched you?

Mr. LATHAM. That's correct.

Mr. BEN-VENISTE. I take it you don't recall whether subsequent to the lunch you requested other information, or other guidance on an informal basis from Mr. Massey on whether he continued to try to get your nose into the tent, as it were, as a client?

Mr. LATHAM. I don't recall. It sounds like he did, but I don't recall.

Mr. BEN-VENISTE. According to the Pillsbury Report, Mr. Chairman, this matter was addressed in the following way. "McDougal's Madison Bank"—that was the bank that you are associated with, not Madison Guaranty Savings & Loan which has been the subject of all of this litigation and discussion?

Mr. BUNCH. Right.

Mr. BEN-VENISTE. And apparently Mr. McDougal had a thing for President Madison and kept naming his institutions after that President.

Mr. BUNCH. That's correct.

Mr. BEN-VENISTE. "McDougal's Madison Bank had refused to pay the Rose Law Firm in full for litigation services rendered in 1981 and 1982. Given this prior experience with McDougal, the Rose Law Firm could hardly be blamed for seeking advance payment before agreeing to represent the McDougal entity once again."

And indeed, was it not the case, Mr. Latham, that a monthly retainer was agreed upon, as opposed to a system whereby the firm would bill the client, Madison Guaranty Savings & Loan, for services rendered after the event?

Mr. LATHAM. That's correct.

Mr. BEN-VENISTE. Now in terms of the question of the funds which were paid over the 18-month period from 1985 to 1986, do you recall that a retainer balance was returned to Madison Savings & Loan at some point, Mr. Latham?

Mr. LATHAM. Yes, I do.

Mr. BEN-VENISTE. Again according to the Pillsbury Report, "Even if all the retainer had been earned in fees, Mrs. Clinton's share would have been less than \$20 a month over that 18-month period." The report also noted: "There is no evidence that the Clintons ever received anything like \$2,000 a month from this engagement, and every reason to believe that they never received more than a trivial sum of money."

That conclusion is based on the fact that Mrs. Clinton's draw as a partner as applied to whatever formula was in effect in 1985 or 1986 at the Rose Law Firm would reflect that she would get a very, very small percentage of this \$22,000 in fees over this 18-month period. Is that consistent with your understanding of how the firm operated at that point, Mr. Knight?

Mr. KNIGHT. Yes. I think that is true, because the net profits for the firm were basically spread over 20-something partners.

Mr. BEN-VENISTE. According to Mrs. Clinton's February 4, 1994, sworn interrogatory, she stated that Massey had come to her because he had learned that certain lawyers at the firm were opposed to doing any more work for Jim McDougal, or any of his companies, until he paid his bill; and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses. First of all, let me ask you whether Mr. Massey was present when you approached Mr. Giroir and Mr. Giroir told you about the outstanding balance?

Mr. CHERTOFF. Excuse me? I don't believe that is what the witness said, that there was an "outstanding balance." That is not my recollection of the testimony.

Mr. BEN-VENISTE. Thank you, Mr. Chertoff.

Was Mr. Massey with you when you had this conversation with Mr. Giroir?

Mr. KNIGHT. No, sir.

Mr. BEN-VENISTE. Do you recall providing Mr. Massey with any information before your meeting about your conversation with your senior partner?

Mr. KNIGHT. I may have mentioned to Rick the conversation that I had with Joe Giroir, but I really don't recall.

Mr. BEN-VENISTE. Would you rule out the notion that either Mr. Massey had an independent conversation with Mr. Giroir or he took from your mention of your meeting with Mr. Giroir that Mr. Giroir, as the senior partner, had raised the issue of a fee dispute, or monies being owed to the firm, as being a concern when you mentioned that you were going to pitch this business?

Mr. KNIGHT. As I said, I really don't remember whether I had a discussion with Mr. Massey about that; and I don't know whether he had any discussions with Mr. Giroir about that issue.

Mr. BEN-VENISTE. But in terms of simply the way these things operate, the senior partner of the firm, as soon as you mentioned the fact that you were going to pitch Madison Savings & Loan business, mentioned that there had been a fee dispute with McDougal that had been unresolved? Correct?

Mr. KNIGHT. Well—that's correct.

Mr. BEN-VENISTE. Since Mr. Giroir was a senior partner of the firm, that would be something on your mind? You wouldn't simply ignore that?

Mr. KNIGHT. I will agree with that. I think the only observation about that is that Rick Massey was a very junior associate at the time, and it would be rather surprising to me to find out he was having discussions with Mr. Giroir about that issue and I was having those discussions with Mr. Giroir because I was a partner.

Mr. BEN-VENISTE. OK. And Mr. Massey, being a junior lawyer, may have even taken the remark to be more significant than you viewed it at the time?

Mr. KNIGHT. That's possible, sir.

Mr. BEN-VENISTE. Now the notion that the firm would want to clean up the outstanding fees owed to the firm prior to undertaking a new matter with the same individual who was involved with a new entity—that is, Mr. McDougal now as owner of Madison Guaranty Savings & Loan—would not be unusual, would it?

Mr. KNIGHT. Well, again, sir, I am not really sure what the problem with billing was. I don't know whether it was a slow-pay problem. I don't know whether it was an uncollected balance problem. I just know that Mr. Giroir was concerned that there had been a billing problem.

Mr. BEN-VENISTE. Isn't it correct that Mr. Giroir told you that before the firm could undertake a new representation with respect to the same individual who had a fee dispute with the firm, that the old matter, the matter in dispute, would have to be addressed before the firm would go forward with the new matter?

Mr. KNIGHT. Yes, sir. I understood that if I decided to proceed with any kind of a new engagement for the firm, that Mr. Giroir wanted to visit with me about that issue; but no business came out of the lunch, and I never pursued the matter any further.

Mr. BEN-VENISTE. You didn't, but the matter was obviously pursued, and the bill was cleaned up, as we now know, before the new matter was accepted? Is that fair to say?

Mr. KNIGHT. I have no knowledge of that, other than of these records that have been shown to me here today.

Mr. BEN-VENISTE. The records seem to indicate that, and we are trying to reconstruct that, along with people's recollections of these events. But your testimony was, if I understand it from your deposition: "Mr. Giroir thought it was fine to go ahead and have the lunch, but if anything came of it and we decided we wanted to undertake representation on something, if we needed to, I needed to look into that to make sure it wasn't a problem."

Mr. KNIGHT. That is an accurate statement, sir.

Mr. BEN-VENISTE. Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Knight, just to be clear, because you gave a very clear statement on this in the first round: Mr. Giroir did not tell you in 1985, there was an outstanding balance on the bill?

Mr. KNIGHT. He did not.

Mr. CHERTOFF. In fact we know, because the record is clear, the bill had been paid the previous October. But since Mr. Ben-Veniste raises the question of Mrs. Clinton's statement, I have to confess to you, Mr. Knight, there is something that is really puzzling about the central thrust of her statement which I think comes to light as you appear here. You see, when you read her statement, she says that Massey has got work, or requests to take on work, after this lunch; that Massey believes there is a billing problem; and therefore Massey comes to her and asks her to straighten it out.

Now, Mrs. Clinton later gave a somewhat different version I think after some of this had been developed during the hearings in her most recent interview, and I think introduced Vincent Foster

into the mix, and her latest version said it was Vincent Foster who came to her.

But what really puzzles me is this: You were at the lunch with Mr. Massey. It seems to me as a matter of plain, simple, common sense that if there had been any offer of work to Mr. Massey from Mr. Latham, either at that luncheon or even afterwards, and Mr. Massey had any concerns about it, he would have gone to you. You were the expert in corporate and securities law, not Mrs. Clinton? Correct? She wasn't a securities partner; she was a litigator, right?

Mr. KNIGHT. That's correct.

Mr. CHERTOFF. In fact, you supervised other lawyers in the corporate securities area?

Mr. KNIGHT. Associates; yes, sir.

Mr. CHERTOFF. What was your seniority relative to Mrs. Clinton in terms of years with the firm?

Mr. KNIGHT. She would have been senior to me, sir.

Mr. CHERTOFF. In number of years spent there?

Mr. KNIGHT. In number of years spent; yes, sir.

Mr. CHERTOFF. How much junior to her were you?

Mr. KNIGHT. That is really hard to say, because I had come to the firm with several years of practice in the securities' law area under my belt. So time at the firm doesn't quite correlate to the level of seniority.

Mr. CHERTOFF. I see. So you had had practice experience at another firm?

Mr. KNIGHT. Well, sir, I had been at the Securities and Exchange Commission, and I had clerked for a Federal Appellate Court, also.

Mr. CHERTOFF. Oh, I see. You actually came from the U.S. Securities and Exchange Commission?

Mr. KNIGHT. Yes, sir, I did.

Mr. CHERTOFF. So you really were an expert in securities?

Mr. KNIGHT. Yes, sir.

Mr. CHERTOFF. Not that I was doubting that before but since we are in Washington, everything seems magnified when it occurs here. Did you supervise securities work and corporate work at the Rose Law Firm?

Mr. KNIGHT. Yes, I did.

Mr. CHERTOFF. You supervised Mr. Massey on things?

Mr. KNIGHT. Yes, sir.

Mr. CHERTOFF. So, given your relationship with Mr. Massey, he's working under you, you are the expert in securities, you attended the lunch with him, you taught the course with him in which Mr. Latham was a student, as a matter of courtesy and common sense I would think that, even if we assumed for a moment that Mr. Massey had been offered work by Mr. Latham and that there was a billing problem, he would come to you. Wouldn't you agree with me that, from your knowledge of Massey and the way the firm works, you would have expected if any work came to Massey as a result of this lunch, he would have come to you about it?

Mr. KNIGHT. Yes, sir. I think that is a fair statement.

Mr. CHERTOFF. He never did come to you about it?

Mr. KNIGHT. Not that I recall.

Mr. CHERTOFF. Now, I also want to pursue another issue raised by Mr. Ben-Veniste early on. Mr. Latham, Mr. Ben-Veniste asked

you whether it was your understanding that the Pillsbury people did not interview you because the Independent Counsel asked them not to. Mr. Knight, do you have any reason to believe the Independent Counsel ever told or asked the Pillsbury people not to interview you?

Mr. KNIGHT. No, sir.

Mr. CHERTOFF. Mr. Bunch, do you have any reason to believe that the Independent Counsel ever told the Pillsbury people not to interview you?

Mr. BUNCH. I don't even know—who are the Pillsbury people?

Mr. CHERTOFF. I think that answers the question. So there is nothing that I can imagine, whether it is a matter of a request of the Independent Counsel or anything else, that should have prevented the people from Pillsbury Madison over the 2 years that they worked on this matter from talking to you in much the same way as we are talking to the two of you here. You certainly cannot think of any reason why they could not have talked to you; right?

Mr. KNIGHT. No, I can't.

Mr. CHERTOFF. Mr. Knight, you weren't concealing the fact that you were at the lunch that the Pillsbury Report spent a considerable amount of effort analyzing, but they never talked to you; is that right?

Mr. KNIGHT. They never talked to me, sir.

Mr. CHERTOFF. Mr. Bunch, in fact, you also were involved in the loan with respect to Whitewater Development, Lot 13; correct?

Mr. BUNCH. Correct.

Mr. CHERTOFF. That was the loan to Mrs. Clinton personally for purposes of developing that lot?

Mr. BUNCH. I believe that was what it was for, yes.

Mr. CHERTOFF. And that was another area the Pillsbury people might have explored, but they didn't. I have to say, I mean, in the last couple of weeks by my count we have identified at least a dozen witnesses who have had direct and intimate dealings with some of the issues that make up this matter, and none of them were talked to by the Pillsbury people in 2 years. So I am sure that that is a matter the Committee will be eager to explore tomorrow when I think, with the benefit of this additional information, we assess the nature of that work.

Now let me go back to you, Mr. Latham, because we were on the issue of this transaction for Castle Grande, which was identified by Madison Savings & Loan in its own interrogatory responses as a deal in which Mr. Ward acted as a straw man. I am correct that, for Mr. Ward's participation in this transaction, he received a commission; is that right?

Mr. LATHAM. That is my recollection. At this point, I don't know if I remember that from that point in time or if I have read it somewhere; but that is my understanding, yes.

Mr. CHERTOFF. The commission was not in the form of cash, but he was given his commission by being allowed to keep a couple of tracts of the property he had taken in his name after the rest of that property was ultimately taken back by Jim McDougal; right?

Mr. LATHAM. Again, I don't have a recollection of that. That is—in the deposition yesterday they read me something; I can't remember what it was, but it indicated that. That's correct.

Mr. CHERTOFF. Well, let me read to you from your own sworn testimony back in 1987, if you get to your trial testimony at page 100. I am referring to the number in the upper right-hand corner. I know we have two sets of numbers.

Mr. LATHAM. OK.

Mr. CHERTOFF. At the very bottom, line 19:

Question: Did any money actually change hands?

Answer: No. The consideration, in essence, was already given. The money was already owned to Seth as commissions. Seth did not pay cash to the Service Corporation for this. This was evidence of a debt that was already owned by the Service Corporation to Seth.

Question: Now was Mr. Ward concerned also because there were Federal examinations at Madison Guaranty Savings & Loan?

Answer: I think that may have been of some concern to him, as well.

Question: I want you to look at now what has been introduced as Defendant's Exhibit No. 3, an option to purchase tracts 27 and 28 of Holman Acres. Can you tell the jury about the circumstances surrounding the Financial Corporation taking an option out on this property?

Answer: Yes. I know this is confusing, but the loan was done really at that time in lieu of the option. The option, more concretely or more accurately reflects the nature of the transaction, that being that the Service Corporation owed Seth \$300,000 in commissions. In the initial purchase of all of that property, Seth retained tracts 27 and 28 of Holman Acres as his commission, which was later to be bought by the Service Corporation. The option allows the Service Corporation to buy the property from Seth. Thus Seth receives the \$300,000 and the Service Corporation would have the property.

Now that was true testimony you gave there, right?

Mr. LATHAM. Yes. At that time I had—

Mr. CHERTOFF. A better memory?

Mr. LATHAM. I don't know that I remember it at that time, but I worked with Madison's lawyers and we went over this transaction in detail. It is pretty confusing, but that was my understanding at this point in time when I gave the testimony; that's correct.

Mr. CHERTOFF. So your understanding of the transaction was that the option was designed to be the way Seth Ward would cash in his commission; that he had held back a couple of tracts of land, and the deal was understood from the very beginning that he would then later receive \$300,000 for the land which would be his commission; right?

Mr. LATHAM. That's correct.

Mr. CHERTOFF. And do you know if the land was actually worth \$300,000?

Mr. LATHAM. I don't know.

Mr. CHERTOFF. Well, wasn't it really worth something more like a hundred-and-something-thousand dollars?

Mr. LATHAM. I have no idea.

Mr. CHERTOFF. Then your answer goes on to say:

The note was done very quickly to make sure that that debt was evidenced should something happen to anybody to protect Seth. The note, however, would have left, if that was the way it was finally structured, would have left Seth with the \$300,000 plus the property, which was not the intent of the transaction.

Now, I take it what you are saying here is, the original way they wanted to get that commission to Ward, for his being the straw man on this deal, was by having him hold back some property, and then he would receive \$300,000 for it. But when they got nervous because the examiners were in the bank, they quickly decided to go the route of issuing a note and having him borrow money secured by the property so that if there was some problem at the

bank because of the examiners, Seth would be protected. Is that the basic gist of it?

Mr. LATHAM. I think that is a fair conclusion. At this point I am in the same shoes that you are. I have to go by whatever I said at that trial because I have no recollection at this point. In fact, I don't think I did then. We spent many hours going through many documents to piece that together. So this is—I would rely on whatever was said at this trial, and what you are saying is a fair conclusion from that.

Mr. CHERTOFF. Let me ask you this, then. Do you know why Mrs. Clinton would have been involved in drafting this option?

Mr. LATHAM. I have no idea.

Mr. CHERTOFF. I think that concludes it for me, Mr. Chairman, except I just wanted to observe for the record that we had originally hoped to have Mr. Henley—that would be Susan McDougal's brother—come in. The reason is because we have been exploring at some length the difference between the statement that Mrs. Clinton gave concerning how she recalled the work being brought in, the statements various witnesses have said, and of course, Mr. McDougal's original allegation that the work was arranged through a meeting he had with Mr. Clinton back in the late summer of 1984. I gather there was some evidence that Mr. Henley may have been in the vicinity of that, and Mr. Henley's lawyer indicated to us that he would exercise his Constitutional right not to testify.

I do think I want to make one last observation and maybe get any comment on this, if anybody has a comment. This bill that was paid in October 1984, was outstanding for some considerable period of time. Then, all of a sudden Mr. McDougal decided he was going to pay it off. It is interesting to look at the coincidence of dates. I mean, Mr. McDougal has maintained at least for some considerable period of time that Mr. Clinton came by to ask for some help in terms of the Rose Law Firm in late August 1984. It is not very much after that that Mr. McDougal finally indicates he is going to pay this outstanding bill.

Mr. Bunch, did Mr. McDougal ever tell you why it was that in October 1984, all of a sudden he decided he was going to pay this bill that had not been paid for some period of time?

Mr. BUNCH. I wouldn't know, other than we may have had a little more money at that time than we'd had previously.

Mr. CHERTOFF. Actually, my understanding is from looking at the minutes that you have provided us with, that in the November Board meeting someone pointed out that paying that bill actually resulted in—or was a contributing factor to a decrease in the profitability of the bank. So apparently the decision to pay the bill actually had an adverse effect on the financial picture of the bank for that quarter. Would you agree with me?

Mr. BUNCH. That was part of the reason that we hadn't paid it. We figured Rose had—we didn't have anything against Rose, but we figured they had more money than we did.

[Laughter.]

Mr. CHERTOFF. That is probably true. But something motivated him to do that in October, just within 2 months of when McDougal has told us there was a visit with Mr. Clinton. Mr. Chairman, that is the end of my questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, the fact of the matter is that the bill had been outstanding for 3 years, Mr. Bunch?

Mr. BUNCH. That's the fact.

Mr. BEN-VENISTE. Whether it had an impact on the bottom line or not, sooner or later you owed it and you were going to have to pay it; right?

Mr. BUNCH. Sure.

Mr. BEN-VENISTE. If Mr. McDougal told you this was the time to do it, that's fine?

Mr. BUNCH. It was time to do it.

Mr. BEN-VENISTE. Now in terms of what has been brought out in this last round of questioning, is it not correct, Mr. Latham, that with respect to the IDC transactions that, to the best of your recollection, Mrs. Clinton had nothing to do with any of that for Madison Guaranty Savings & Loan?

Mr. LATHAM. With respect to that transaction?

Mr. BEN-VENISTE. Yes.

Mr. LATHAM. I have no recollection of her involvement, no.

Mr. BEN-VENISTE. In connection with the option agreement that Mr. Chertoff has brought up, the conclusion of Pillsbury Madison & Sutro in their Supplemental Report of February 25, 1996, states:

While Mrs. Clinton drafted the May 1, 1986, option, nothing proves she did so knowing it to be wrong. The circumstances of the work point strongly toward innocent explanations and the theories that tie this option to wrongdoing or to the straw man arrangements are strained, at best.

And finally, with respect to all of this "who-struck-John" about bringing the client in the door 11 years ago, the conclusion of the Pillsbury Report is that:

Mrs. Clinton's recollections and Richard Massey's recollections differ in some respects, but for present purposes the differences are not material. For present purposes, it makes little difference who was right. There is no hint of fraud or intentional misconduct in either version, and the mere act of retaining the Rose Law Firm did not harm Madison Guaranty in any respect.

I have nothing further.

The CHAIRMAN. Very good.

First of all, let me thank the three witnesses.

Mr. Knight, where do you work now?

Mr. KNIGHT. Stephens, Inc., sir.

The CHAIRMAN. Oh, the investment bankers?

Mr. KNIGHT. Yes, sir.

The CHAIRMAN. You are their securities expert?

Mr. KNIGHT. Well, sir, I run the Legal Department. I am their General Counsel.

The CHAIRMAN. Oh, you are General Counsel?

Mr. KNIGHT. Yes, sir.

The CHAIRMAN. Well, they are very fortunate.

Mr. KNIGHT. Thank you, sir.

The CHAIRMAN. Very fortunate. I have to tell you that I am very impressed with the clarity and truthfulness. This is not an easy matter, I understand that. I think we all understand that and I just want you to know.

Mr. Bunch, I want to thank you for coming in. Again, none of this is pleasant. You find yourself in here trying to recall events that go back years and years, and what did or didn't take place. We thank you for your candor and for coming forth.

Mr. BUNCH. Thank you, sir.

The CHAIRMAN. Mr. Latham, you find yourself dragged in here after years and years, and it is understandable, obviously, that you can't go back and recall with definiteness those things that took place back in 1983, 1984, 1985, and so we appreciate your testimony.

I will make this comment. I found this new information as it relates to this business about the outstanding legal bill, that the records clearly indicate that that matter had been taken care of, and it was no longer an outstanding legal bill.

I think that from the testimony of both Mr. Latham and Mr. Knight in recounting what took place at the lunch, there was no business that came out, or resulted from that lunch. It is just absolutely very clear.

We have a number of matters. We will write up our reports, Counsel, on that. We have been—

Senator SARBANES. Mr. Chairman, I just want to say, I don't think that that last statement is clear. Obviously, we have a differing view about it.

The CHAIRMAN. Probably we will do that, and that will be the wrap-up in our reports where we will reflect on that.

I am going to excuse the witnesses at this time.

We have two outstanding matters which I would like to try to resolve. One was the question of—

Senator SARBANES. Are we finished with the panel?

The CHAIRMAN. Yes. I want to thank the panel very, very much.

Mr. KNIGHT. Thank you, sir.

Mr. BUNCH. Thank you.

Mr. LATHAM. Thank you.

The CHAIRMAN. We have two important matters to resolve, and I would hope that we could do that. The first is the question of getting the fingerprints from the FBI on the billing records. I would hope that we could send out a subpoena to produce all documents referred to in Attachment A. That reads:

All records, regardless of format, including, but not limited to, any reports, memoranda, correspondence, and records in any other medium, that reflect, refer, or relate to any analysis conducted by the Federal Bureau of Investigation of fingerprints found on records reflecting the Rose Law Firm's representation of Madison Guaranty Savings & Loan Association that were discovered in the White House by Special Assistant to the President Carolyn Huber.

I would hope that we could agree to send the subpoena without us having to convene all the Members for that purpose.

Second, there is a question—

Senator SARBANES. Mr. Chairman, shall we discuss that first?

The CHAIRMAN. That is number one. Then there is a second question with respect to a communique that we received from Mr. Hale's lawyer. I think that we should respond to that by way of asking them for a time certain before we take any further action.

Senator SARBANES. I have not seen this letter.

The CHAIRMAN. I think we are down to, in terms of who the Committee may or may not be bringing before us, or what informa-

tion we are seeking, I think those are the last two. It is a matter of Hale, and it is a matter of getting these materials. So I am going to ask that—

Mr. BEN-VENISTE. Right now, the status of things, with respect to Mr. Hale, is that a subpoena has been served on Mr. Hale for his appearance next Monday for deposition, and next Wednesday for hearing testimony. Now his lawyer has asked for additional time, and I guess that is what is pending before the Committee. He has not responded formally about whether Mr. Hale will attempt to assert a Fifth Amendment privilege.

And, Mr. Chairman, we have done some research on that issue with respect to the appropriateness, in view of the fact that he did testify at length in Little Rock on the same issues we will question him about here were he to appear.

The CHAIRMAN. Yes. I am saying that we have to resolve this. I would hope that we could issue the subpoena for the fingerprints today without there being a necessity of convening all the Members, because I do not think there is any controversy. The clock is ticking. If we are not going to do it today, then tomorrow I will recommend that we hold a hearing for the purposes of issuing the subpoena.

Mr. BEN-VENISTE. Well, there is kind of a step in between that, perhaps, since we are doing this in public, that the public doesn't know about, and that is the letter we received from the Independent Counsel, which has directed the FBI in this matter, where they have refused to turn over the material to us.

Senator SARBANES. I think if a subpoena is going to be sent, it should be sent to the Independent Counsel.

The CHAIRMAN. No. No.

Senator SARBANES. I do not think—

The CHAIRMAN. Well, then we will just—

Senator SARBANES. —have not seen this, but let me just make a statement.

The CHAIRMAN. We will convene the Committee for consideration of the subpoena.

Senator SARBANES. I do not think we should politicize the FBI. And I do not think you should place the Director of the FBI, Mr. Freeh, in what I would regard as an untenable position.

We sent a letter to the Independent Counsel asking for this report. I gather they have declined to respond, and therefore I think the subpoena should be addressed to the Independent Counsel. I do not think you should, in effect, play a political game with the FBI. I feel very strongly about this. I mean, I have just seen this a little bit ago, but I feel very strongly about this. I don't think the FBI ought to be politicized.

If a subpoena is going to be sent, it ought to be sent—we sent the letter to the Independent Counsel making the request. They declined. If you want to follow-up on that, I think the subpoena should be sent to the Independent Counsel. We ought not place Director Freeh in what in a sense is an untenable position and sort of portray him in some way as being uncooperative. These FBI agents are working for Starr.

The CHAIRMAN. Senator Sarbanes, there has not been one iota or indication that the FBI has not been cooperative. I do not under-

stand how we could come to that conclusion, or how my indicating that it is necessary to send out a subpoena because the Independent Counsel, as indicated, really, that would be the only manner in which to proceed.

Senator SARBANES. Who indicated that?

The CHAIRMAN. I am going to ask Mr. Chertoff to respond.

Senator SARBANES. Well, no, Mr. Chairman, let me make a point.

The CHAIRMAN. Mr. Chertoff, would you—

Senator SARBANES. No. Let me develop the point. When we asked for the O'Neill 302 records. We asked those of the Independent Counsel. They did not furnish them. We did not make the proposition that we should subpoena the Director of the FBI. I do not want to politicize the FBI. I know a political game—I mean, obviously this has a heavy political content, these hearings, and has had all through the consideration, but at least let's not drag the FBI into that political pit.

The letter we sent on this matter was sent to the Independent Counsel. If you do not get an appropriate response from the Independent Counsel and you want to follow-up, I think the subpoena should be sent to the Independent Counsel and you ought not put the Director of the FBI in this position.

Mr. CHERTOFF. Mr. Chairman, it might illuminate this if I were to point out, first of all, that there is no intention of putting the FBI Director in any position. It is always the practice, as a matter of law, when you subpoena records that are created by an agency, the subpoena is directed to the agency that created the records.

In my years as a U.S. Attorney, if somebody subpoenaed FBI reports, even if they were in the possession of the U.S. Attorney's Office, the subpoena is directed to the agency which produces them. It is a matter of just the technical way you properly do it. It is not a matter of trying to individually make the Director come in and do something.

Let me also observe that when we have requested voluntarily that information be provided, we have sent the letters to the Independent Counsel. But when we have subpoenaed materials that were Department of Justice materials, we have subpoenaed them from the Department, whichever organ of the Department had the materials, and then with the understanding that the Independent Counsel would make the decision. There is no suggestion here that Mr. Freeh is going to make the decision, or the FBI is going to make it on their own. They clearly are going to have to get guidance and defer to the Independent Counsel.

Senator SARBANES. Then why don't we send the subpoena to the Independent Counsel?

Mr. CHERTOFF. Because the Independent Counsel is not the appropriate designated recipient of subpoenas.

Senator SARBANES. No. You are setting up a stand-off between Freeh and the Independent Counsel, and you are bringing Freeh into the political arena.

The CHAIRMAN. That is not—

Senator SARBANES. I do not approve of that.

The CHAIRMAN. Excuse me. Excuse me.

Senator SARBANES. I think the FBI ought—

The CHAIRMAN. Now wait. Now wait.

Senator SARBANES. —not be politicized in this manner.

The CHAIRMAN. You know, the only person who is bringing up politics is you, Senator.

Senator SARBANES. We sent the letter to the Independent Counsel. No. The politics was brought up—

The CHAIRMAN. The politics—no, no.

Senator SARBANES. —by putting this subpoena in front of us to Mr. Freeh, the Director of the FBI.

The CHAIRMAN. Oh, no. You know what, we have been discussing this matter and attempting to get a resolve of it, and we can't get a resolve of it. So I am saying to you that either we are going to get a resolve of getting these fingerprints or getting the information. We have agreed to this, but we are not getting a satisfactory resolve. That is the only reason I have been forced to say that we are going to have to come to a conclusion in the manner by which we make a good-faith effort to obtain this information. Now this is not an attempt to have—

Senator SARBANES. It certainly is.

The CHAIRMAN. Well, I am sorry that you interpret it that way. Our actions are designed to attempt to get these records. We are not attempting to put the FBI or anybody else on the spot. This will have to be a decision that is made by the Independent Counsel. But since the FBI is the custodian of these records, we believe that is the correct manner in which to proceed. There is precedent for this in every other instance with every other Department, including the FBI.

This is not an attempt to politicize this. Indeed, I would suggest that Counsel call the Independent Counsel for guidance. Ask them, get a determination as to who they believe the proper party or parties would be to issue a subpoena. Now if that is something we can agree to, and if he believes that he will accept the service on the basis of that and then make a determination, fine. We will proceed in that manner. But what I am suggesting is that we have to get this done because the time is running out.

Senator SARBANES. Well, Mr. Chairman—

The CHAIRMAN. Now, I have bent over backward, and I resent the Senator saying that we are attempting to politicize it. You know that is not right. I have gone to extraordinary lengths in order to move these hearings, in order to come in before the date of the 14th, to try to accommodate all the witnesses at the same time. I have also indicated that I would hope that Mr. Chertoff and Mr. Ben-Veniste would be able to deal with the other outstanding matter with respect to Mr. Hale.

I think Mr. Hale's attorney should be advised that on a particular date certain we want an answer one way or the other whether he can come in or he can't come in, and then we will determine what to do thereafter.

Senator SARBANES. Mr. Chairman, the letter was sent from Mr. Chertoff and Mr. Ben-Veniste to the Independent Counsel requesting they provide the Special Committee with a copy of the report of the analysis, assuming one were done.

The CHAIRMAN. That's right.

Senator SARBANES. Now apparently they have not been forthcoming in response to that request. If that is the case, then it seems

to me the follow-up should be a subpoena addressed to the Independent Counsel and not to Mr. Freeh, the Director of the Federal Bureau of Investigation, which would then put Freeh in a difficult position vis-à-vis the Independent Counsel. These FBI agents, if they did this analysis, did it for the Independent Counsel. I mean, I am prepared to send a subpoena to the Independent Counsel. I am prepared to follow up on the rejection of our letter.

The CHAIRMAN. All right.

Senator SARBANES. But I don't want to—I am not going to be a party—

The CHAIRMAN. Don't raise your voice to me, Senator.

Senator SARBANES. I want to be very clear.

The CHAIRMAN. Don't raise your voice.

Senator SARBANES. Well, I want to be very clear about this.

The CHAIRMAN. All right. But just don't raise your voice, please.

Senator SARBANES. I am not going to be party to dragging the FBI into the political arena. I just do not think that is a proper thing to do.

The CHAIRMAN. You know that a summons is—

Senator SARBANES. I just saw this thing. It was just laid on me.

The CHAIRMAN. Oh, you know what—

Senator SARBANES. The letter was sent to the Independent Counsel, and the follow-up, then, if we are not satisfied with his response with respect to a subpoena, ought to be to the Independent Counsel and not to the Director of the FBI.

The CHAIRMAN. The fact of the matter is that, for technical reasons, this is commonplace. This is done regularly. I think Mr. Chertoff has explained that this is not unusual, and I can't understand the thrust, except to attempt to make the Committee's work look like it is something that we haven't agreed on together, and that was to get whatever information that those documents contain as it relates to who may or may not have handled them. That is all it is.

Senator SARBANES. Mr. Chairman—

The CHAIRMAN. But I will—I will—I will—and we may as well get it out here now—be delighted to sign and authorize a subpoena, with your concurrence, to the Independent Counsel. If the Independent Counsel indicates to us, and I would hope they would indicate sooner rather than later because we have time, that he believes for legal, technical reasons that they have to be sent to the FBI, that we could then get concurrence not to put the FBI in a position, but rather legal counsel, the Independent Counsel, will have to make a judgment and a determination that we would then proceed with both, if that is necessary. Now, I can't offer anything more in good faith. If the Senator will join with me in that, I would proceed in that manner.

Senator SARBANES. I will send a subpoena to the Independent Counsel, but I don't think you ought to structure a situation as this subpoena to the Director of the FBI would do, by placing the FBI in an intolerable position between this Committee and the Independent Counsel. These FBI agents are working for the Independent Counsel.

The CHAIRMAN. We will agree, Senator—and this is only a way to get a final determination as to whether or not the Independent Counsel is going to oppose even the subpoena.

We have to make the formal request. We have no problem with that. This is not an attempt in the final analysis, this is a decision that will be made by the Independent Counsel. But for technical reasons, you serve the subpoena on the agency that has made this report, that has this information. It is just a technical thing. Now if the Independent Counsel objects, I am willing to say that this is not a decision being made by the FBI. We will make it. I will stipulate that in the record.

Senator SARBANES. I see.

The CHAIRMAN. So maybe we have at least arrived at a determination that we will not expect the FBI to make this decision; that it is going to be made, obviously, with respect to what the Independent Counsel feels is appropriate. Would that be fair?

Senator SARBANES. I think we should direct the subpoena to the Independent Counsel.

The CHAIRMAN. Let me say to you that I have no problem with doing that—

Senator SARBANES. Let's do that, then.

The CHAIRMAN. —but technically, they may reject that. Then we will have to come back again and issue a subpoena to the Director of the FBI. I hope that they won't do that. But let me say that I will direct, with your concurrence, that we send—

Senator SARBANES. Well, then they should be clear that they are issuing these instructions to the FBI Director.

The CHAIRMAN. OK. Fine.

Senator SARBANES. The FBI Director ought not to be put in the position of appearing not to be cooperative when the basis—

The CHAIRMAN. Senator, I agree—

Senator SARBANES. —of the noncooperation is the Independent Counsel.

The CHAIRMAN. Senator, we agree on that.

Senator SARBANES. Well, I am pleased to hear that.

The CHAIRMAN. Well, it took an awful lot to say that we agreed on that. But just so we have it on the record.

Mr. BEN-VENISTE. It is clear, Mr. Chairman, that if somebody has the report, it is clearly the Independent Counsel who has the report. We want to get the report, and we want to go by way of subpoena.

The CHAIRMAN. All right.

Mr. BEN-VENISTE. They have turned us down on that and on the 302 reports, if we want to subpoena both of those, I think we should do that.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Yes, sir.

The CHAIRMAN. I believe that Senator Sarbanes and I have come to an agreement. First, we issue the subpoena to the Independent Counsel. Second, we issue a subpoena to, I would hope, to the FBI Director with the clear understanding that if they do not respond, obviously this is a determination that will be made by the Independent Counsel.

This way, at least, we have met the technical. We understand that the subpoena is being issue. I would ask, with this understanding, because it meets the technicalities of the law that require it goes to the head of the agency that has done this work. Only for those purposes. With the clear understanding that the FBI will not be placed in a position where it might be at variance with the opinion of the Independent Counsel.

Senator SARBANES. Mr. Chairman, no, no, no. I don't accept the proposition that it is a technicality with regard to it going to the FBI. I think that we should send the subpoena to the Independent Counsel——

The CHAIRMAN. I am going to authorize——

Senator SARBANES. —to leave the FBI out of it, and see what response we get from the Independent Counsel.

The CHAIRMAN. By the way, we have repeatedly subpoenaed the FBI for documents, repeatedly, or the Department of Justice. This is not the first time. I have to begin to think that this is an effort to stall these hearings, for whatever reason—I don't know why—and to deprive us of the information.

Senator SARBANES. I don't think we have subpoenaed the FBI, have we, for work product?

The CHAIRMAN. Yes, we have.

Mr. CHERTOFF. My recollection is, all along when we have subpoenaed documents from the FBI or the Department of Justice, actually we usually send it to the Attorney General. There was an objection raised to that by Mr. Ben-Veniste because there was a concern that we were trying to make her look like she was in the middle, we then went——

Senator SARBANES. Yes, and the FBI.

Mr. CHERTOFF. —to the FBI.

Senator SARBANES. I think that we should go to the Independent Counsel. I don't think you should put these other people in the middle. I don't think the FBI, professional law enforcement agency, ought to be put in that posture. Now, you know, we have offered a perfectly constructive——

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. —path here to try to get at these records. And that is, to send the subpoena to the Independent Counsel.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. We are not saying, "Don't do anything."

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. We are saying, follow-up in that regard.

The CHAIRMAN. Would you, please.

Senator SARBANES. Politicize the FBI——

The CHAIRMAN. I guess the hearing was too tranquil for you. [Laughter.]

Senator SARBANES. Well, I am not going to be part of politicizing the FBI.

The CHAIRMAN. Why don't you stop this nonsense. Nobody has talked about politics except yourself.

Senator SARBANES. You are the one who put this subpoena in front of me.

The CHAIRMAN. You are the only person saying politics, politics, politics. I think you cry too much.

Now if the Senator wants to join with me in the issuance of a subpoena requesting this information—and I will ask both Counsels to call Mr. Starr's office and speak to them—that is fine. We will do that. If the Independent Counsel says technically, and I don't know, he may say, fine, I will make that request. I hope we do not have to come back and do this again and issue a subpoena to the FBI, for these records. But if we have to, then we will have to do that.

I will take your course. Tomorrow, then, we will have to see what the response is. And if you will join with me in asking for this information, then I would suggest that we do that and ascertain what the position of the Independent Counsel is.

Senator SARBANES. So we will issue a subpoena to the Independent Counsel?

The CHAIRMAN. Yes. We will issue a subpoena to the Independent Counsel.

Senator SARBANES. Fine. Not to the Director of the FBI.

The CHAIRMAN. However, if they indicate that technically it has to go to the Justice Department or to the FBI Director, then I would hope the Senator would join with me privately in issuing that subpoena. Senator?

Senator SARBANES. I want to see what the Independent Counsel says and what the basis of his response is.

The CHAIRMAN. OK.

Senator SARBANES. I mean, I am not, you know——

The CHAIRMAN. I have said——

Senator SARBANES. Have you had a discussion with the Independent Counsel about this?

The CHAIRMAN. No, I have not. I would hope that they would agree. But if they say technically you have to go through this process, I hope that you would join with me again in issuing this without having to get a vote of the full Committee. I would hope that would be the case.

Senator SARBANES. Well, I want to see what the OIC says.

The CHAIRMAN. We understand.

The Committee stands in recess.

Mr. BEN-VENISTE. Mr. Chairman, with respect to Mr. Hale?

The CHAIRMAN. We stand in recess.

[Whereupon, at 12:03 p.m., the hearing was recessed, to reconvene at 9:30 a.m., Friday, May 17, 1996.]

[Appendix supplied for the record follows:]

CONFIDENTIAL

Interrogatory No. 17: With respect to the Rose Law Firm's representation of MADISON GUARANTY in 1985 and 1986:

(a) ~~Was Mrs. Clinton the lawyer responsible for obtaining this business for the Rose Law Firm? If not, who was?~~

The Rose Law Firm had first represented Jim McDougal in about 1981 with respect to litigation arising out of his purchase of the Bank of Kingston. I did not work on the 1981 matter, but I recall that Jim disputed the amount of his final bill and refused to pay the entire amount requested.

To the best of my recollection, the president of Madison Guaranty, John Latham, who was a friend of an associate at the Rose Law Firm, Richard Massey, became interested in having Madison Guaranty issue some kind of preferred stock to raise capital. Latham had spoken to Massey about doing the related legal work. In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the law firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses. Under such an arrangement, the firm could be assured that Madison Guaranty was staying current with regard to paying for the new work that the firm might do for it.

I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him. I agreed to go see McDougal. I visited him at his office on April 23, 1985, and told him that I understood Latham wanted Massey to

DKSN000800

CONFIDENTIAL

do some work for Madison Guaranty, but that our firm would not let Massey proceed until the previous bill was paid and some kind of prepayment arrangement was worked out for new work the firm might do. As I recall, McDougal agreed that Massey could proceed with the work and informed me he would arrange to pay the past due bill. McDougal also indicated that he was agreeable to some kind of prepayment arrangement.

(b) Was Mrs. Clinton the partner in charge of this work? If not, who was?

I was not "in charge" of the Rose Law Firm's work for Madison Guaranty in 1985-86, although I was the billing partner. During the early part of Massey's work, he kept me generally advised of what he was doing and may have sent me drafts of the documents he was preparing. I was not, however, an expert on securities law. I believe that Massey consulted with members of the firm's securities department.

(c) Was Mrs. Clinton the partner responsible for billing MADISON GUARANTY? If not, who was?

I was the billing partner for the Madison Guaranty representation which the Rose Law Firm undertook in the spring of 1985.

(d) Who negotiated the retainer arrangement with MADISON GUARANTY whereby, starting approximately in April 1985, it paid the Rose Law Firm \$2,000 a month? See document RLF2 03062 through RLF2 03063. DESCRIBE the circumstances in which MADISON GUARANTY agreed to enter into that arrangement.

Please see my response to Part (a), supra. I don't recall who negotiated the "retainer arrangement" (this was in fact

DKSN000801

MINUTES OF MADISON BANK AND TRUST
BOARD MEETING

The regular board meeting of Madison Bank and Trust met Tuesday, November 27, 1984 at the Madison County Telephone office at 6:00 PM. All members were present, and Chairman McDougal announced a quorum was present and called the meeting to order.

The first order of business was the discussion of the Auditor's Report and Management Letter. The Payroll Procedures and the Incomplete Loan Accounts were discussed. It was suggested that the accountant instruct bank personnel in a method that would more accurately reflect withholding at each pay period.

The bond was discussed. The high rate was of concern to the members. The Board instructed President Bunch to send a letter to State Bank Commissioner to determine another possible course of action.

The FDIC Report of Examination of August 24, 1984 was discussed. This report was discussed at board meeting in September in Fayetteville Report again reviewed and discussed. Letter from Mr. Halvorson was made part of minutes on motion by Austin Smith, seconded by Julie Baldrige. It was approved unanimously.

The minutes of the September meeting were read, reviewed, corrected, and approved unanimously. The loan portfolio was produced by Mr. Bunch, with trouble loans highlighted, and reviewed by Board. With loan reserve ratio in mind, it was believed the reserve was adequate based on this.

The Daily Statement was read, reviewed, and approved unanimously. It was noted that earnings were \$69,048 with a L/D Ratio of 51% and the Capital Ratio of 7.6%. The reduction in earnings was attributed to heavy accounting fees for the audit and a payment of legal fees from 1983 lawsuit. President Bunch noted it was impossible that the Bank's Capital Account could be evaluated because the accrual system on CD's was not daily. Beginning now, we will move to find a method for daily accrual. It also was noted that a \$225,000 CD was accepted

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

FRIDAY, MAY 17, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:40 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

I am going to ask our three witnesses if they would stand for the purposes of taking the oath.

[Witnesses sworn.]

The CHAIRMAN. The Committee is now in the process of concluding its public hearings, and today we will hear from three partners in the law firm of Pillsbury Madison & Sutro. The firm prepared a report for the Resolution Trust Corporation regarding the possible bringing of civil claims against persons involved in the failure of Madison Guaranty Savings & Loan.

In February 1994, the RTC hired the Pillsbury law firm. I think that it is fair to say that when the White House learned that Mr. Stephens, a Pillsbury partner and former U.S. Attorney, would head the investigation, there was a storm of protest.

Today, the Special Committee will hear, among other things, what Mr. Stephens' role was as it relates to the report. We will also examine the extent to which Pillsbury's work was monitored and directed by officials at the RTC.

It also appears that there were a number of witnesses that Pillsbury could have interviewed but did not, and the Committee wants to know why and how it is that these witnesses, which may have had relevant knowledge, were not, to our knowledge, contacted by Pillsbury. These people include the bank officials involved in the loans that financed the Whitewater arrangement, the Arkansas regulators that oversaw the Madison Guaranty and Rose Law Firm attorneys and accountants for the Clintons.

Senator Sarbanes, do you have a statement?

Senator SARBANES. No.

The CHAIRMAN. If any of the witnesses have any statements that they would like to make to the Committee, we would be very pleased to receive them.

[No response.]

Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Good morning, panel.

Mr. Stephens, I would like to begin with you. You are a former U.S. Attorney for the District of Columbia, correct?

**SWORN TESTIMONY OF JAY B. STEPHENS
PILLSBURY MADISON & SUTRO**

Mr. STEPHENS. Correct.

Mr. GIUFFRA. You were a member of the Watergate Special Prosecution Team?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. You were a former Assistant U.S. Attorney for 5 years, I believe?

Mr. STEPHENS. Approximately.

Mr. GIUFFRA. You were a Senior Member of the Justice Department for another 5 years?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. And you are now a partner at the Pillsbury Washington office?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. Now in February 1994, the Pillsbury firm was retained by the Resolution Trust Corporation to investigate whether the RTC could bring a civil cause of action in connection with the failure of Madison Guaranty, is that right?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. Madison Guaranty was the S&L which was run by a man named James McDougal?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. Mr. Patterson, you are the head of the litigation department at Pillsbury?

**SWORN TESTIMONY OF CHARLES E. PATTERSON
PILLSBURY MADISON & SUTRO**

Mr. PATTERSON. Yes.

Mr. GIUFFRA. And you are based in Los Angeles?

Mr. PATTERSON. Yes.

Mr. GIUFFRA. You were the partner in charge for Pillsbury of this Madison/RTC matter?

Mr. PATTERSON. I was.

Mr. GIUFFRA. And am I correct that the cost to the RTC of the investigation your firm conducted, including fees of outside consultants and disbursements, was just under \$4 million?

Mr. PATTERSON. I believe that's correct.

Mr. GIUFFRA. Pillsbury prepared a number of lengthy reports for the RTC?

Mr. PATTERSON. We did. It was one report broken up into several sub-reports.

Mr. GIUFFRA. Two reports dealt with the Rose Law Firm?

Mr. PATTERSON. Correct.

Mr. GIUFFRA. Another two reports dealt with Whitewater Development Corporation?

Mr. PATTERSON. Yes.

Mr. GIUFFRA. Mr. Ericson, you are a partner in Pillsbury's San Francisco office?

**SWORN TESTIMONY OF BRUCE A. ERICSON
PILLSBURY MADISON & SUTRO**

Mr. ERICSON. That's right.

Mr. GIUFFRA. You were the principal author of both of the Rose Law Firm Reports?

Mr. ERICSON. Yes.

Mr. GIUFFRA. You were the principal author of both of the White-water Reports?

Mr. ERICSON. Yes.

Mr. GIUFFRA. Mr. Stephens, you are aware of substantial public attention, particularly in the media, linking the authorship of these reports to you?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. Last night I looked on the computer and found 429 stories associating the reports with you. Would you be surprised to learn that?

Mr. STEPHENS. I haven't looked. I don't know.

Mr. GIUFFRA. These are not Jay Stephens' Reports, am I right?

Mr. STEPHENS. That's correct; I did not write these reports.

Mr. GIUFFRA. You did not draft the reports?

Mr. STEPHENS. I did not draft the reports.

Mr. GIUFFRA. You were not the managing partner on this project; is that correct?

Mr. STEPHENS. That is correct; Mr. Patterson was.

Mr. GIUFFRA. You were not the billing partner on this project?

Mr. STEPHENS. Mr. Ericson was the billing partner.

Mr. GIUFFRA. You did not review or comment upon any of the Rose Law Firm Reports prepared by your firm?

Mr. STEPHENS. That is correct.

Mr. GIUFFRA. And you cannot agree or disagree with any of the conclusions or statements contained in those reports?

Mr. STEPHENS. I have no basis to agree or disagree with the conclusions of those reports.

Mr. GIUFFRA. With regard to the final Whitewater Report, which was issued in December 1995, you did not review that report?

Mr. STEPHENS. That's correct; I did not review that report.

Mr. GIUFFRA. And you are not in a position to agree or disagree with any of the statements contained therein?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. Did you conduct any depositions in connection with Pillsbury's investigation for the RTC into the failure of Madison?

Mr. STEPHENS. No, I did not.

Mr. GIUFFRA. Did you conduct any witness interviews?

Mr. STEPHENS. I had one contact with a potential witness related to a petition we were filing to seek access to Grand Jury material which was in the possession of the FBI and the then-Special Counsel. I contacted that witness to obtain supporting factual predicate for that petition.

Mr. GIUFFRA. But statements such as "A prominent Republican, former U.S. Attorney, Jay Stephens headed the inquiry," those are incorrect?

Mr. STEPHENS. That's correct; they are incorrect.

Mr. GIUFFRA. Now after——

Mr. STEPHENS. Mr. Patterson headed the inquiry.

Mr. GIUFFRA. Excuse me, sir?

Mr. STEPHENS. Mr. Patterson headed the inquiry.

Mr. GIUFFRA. Now after public statements identified you as the author of these reports, did you discuss with your partners the need to correct the record?

Mr. STEPHENS. On one or two occasions, I believe I raised, most likely with Mr. Ericson, some concern I had that the factual record was not clear, or that I felt it was inappropriate, that somehow or other either I was getting the credit or the blame for the reports, since I hadn't written the reports. I also raised the matter with a couple other partners in our firm, including a member of our executive committee.

Mr. GIUFFRA. What were you told in response to your request that you would like to correct the record?

Mr. STEPHENS. I think as a general matter the sense I got was that the client did not want us to get involved in making public statements about the firm's involvement.

Mr. GIUFFRA. The client would be the RTC?

Mr. STEPHENS. Correct. From the beginning, our firm's position had been that this was a report or these were reports of the firm, not of any individual; that the firm had been retained, not any particular individual; and that likely over a period of time, press interest would dissipate and the reports would stand on their own.

Mr. GIUFFRA. I would like to direct your attention back to the beginning of the retention of the Pillsbury firm by the RTC. That was in February and March of 1994?

Mr. STEPHENS. February 1994.

Mr. GIUFFRA. Now in that initial period in February 1994, who at the Pillsbury firm did the work at the partner level, as far as you could tell?

Mr. STEPHENS. The most immediate contact was with Mr. Ericson and myself who I think were most intimately involved during February 1994. It may have been that Mr. Patterson was involved. I believe I had very little, if any, contact with Mr. Patterson during that first month.

Mr. GIUFFRA. Would you have been the Pillsbury lawyer who attended the initial meeting with the RTC about the engagement?

Mr. STEPHENS. When we obtained notice or authority that we had been retained—that initially was done orally I believe—I was advised that I should meet with I believe it was Mr. Gabrellian from the RTC to begin this process. That would have been the second week of February, probably a Tuesday; I think it was the 8th.

Mr. GIUFFRA. February 8th? I believe that's when it was.

Mr. STEPHENS. There initially was some concern because the statute of limitations with respect to any potential claims against Madison was due to expire I believe on the 29th of February of that same year. So there was some concern about an urgency to apply resources, evaluate potential claims, and begin the process.

I was on-site in Washington, and I initiated the meeting, or we scheduled the meeting; Mr. Gabrellian and I scheduled a meeting for I guess it was the 8th of February.

Mr. GIUFFRA. In fact, hadn't Mr. Gabrellian, prior to this initial meeting, contacted you about possibly having Pillsbury get involved in this engagement for the RTC?

Mr. STEPHENS. I had received a call from Mr. Gabrellian. I don't remember today whether it was a live telephone call or whether it was an extended voice mail message, but Mr. Gabrellian had called and indicated that they were interested in retaining the Pillsbury firm. He was seeking certain information regarding potential staffing, potential capacity to deal with the investigation, and asked for a call back.

Either subsequently to that call, or shortly before that call from Mr. Gabrellian, I had also received a call from Mr. Ericson essentially discussing the same general matter.

Mr. GIUFFRA. Now at the outset of this engagement, did you understand that the RTC wanted someone with your prosecutorial experience to be involved in this engagement?

Mr. STEPHENS. Well, I am not sure what the RTC wanted. The sense I had, and I think the sense perhaps Mr. Patterson and Mr. Ericson had—but they can speak for themselves and the RTC can speak for itself—was this was an investigative issue; there were issues relating to a potential liaison and coordination with on-going criminal investigations with respect to Madison; and it would be helpful to have someone who had a substantial amount of investigative experience, and particularly someone who had a substantial amount of criminal investigative experience, to be part of the team in this investigation.

Mr. GIUFFRA. There was also an interest in having someone who was located in Washington, DC involved in the matter?

Mr. STEPHENS. That is correct. I think one of the interests the RTC had in retaining our firm was not only our prior work for the RTC but also the fact that we had a Washington office. The agency obviously was located here; a substantial amount of the documents were located here; and it seemed apparent that there would be a lot of back and forth with respect to a Washington base for the conduct of this investigation.

Mr. GIUFFRA. During February, did you attend meetings with the personnel at the RTC on a regular basis?

Mr. STEPHENS. Yes.

Mr. GIUFFRA. Are you aware of any meetings that were held between the RTC and Pillsbury during February and March of 1994, at which you were not an attendee?

Mr. STEPHENS. During February and?

Mr. GIUFFRA. February and March 1994?

Mr. STEPHENS. I am not aware of any specific meetings. I would have attended most of those meetings. There may have been occasions when Mr. Ericson was back, where he would have met with Mr. Gabrellian on a particular problem, or perhaps Mr. Arbit or Mr. Igo or some other staff member from the RTC. But as a general rule, I was having some regular contact with the legal staff of the RTC, along with Mr. Ericson.

Mr. GIUFFRA. I would like to put up on the Elmo, a case plan and budget that was prepared by Pillsbury. If we could just turn to the second page of that document, which is a memorandum?

Mr. STEPHENS. Do we have those documents?

Mr. GIUFFRA. You should have those in your packet. The memo is dated February 16, 1994. If you could just turn to the second page. What was the purpose of this case plan and budget, as far as you know, Mr. Stephens?

Mr. STEPHENS. The RTC required a case plan and budget before undertaking a retention of outside counsel. This was a general preliminary overview of how this matter might be staffed and the general scope of the engagement as we understood it from a very preliminary point of view.

Mr. GIUFFRA. This memorandum was from Mr. Patterson, yourself, and Mr. Ericson?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. Was it your understanding, at the outset of the engagement, that you, Mr. Patterson, and Mr. Ericson would be the three partners at the Pillsbury firm who would handle this matter for the RTC?

Mr. STEPHENS. It was my understanding we would be three of the partners who would be involved in the matter. I think if you look at the case plan, there's one or two other partners I believe whose names are mentioned. I think the sense was there would be three partners who were relatively involved in the—

Mr. GIUFFRA. Principally involved.

Mr. STEPHENS. Principally involved, but we would need other resources perhaps to staff various parts of the investigation.

Mr. GIUFFRA. Now if I could just turn your attention to page 5 of the case plan, and it indicates, for example, that you would be on the PM&S team responsible for looking at the effect of bankruptcy discharges.

Mr. STEPHENS. That's what it says.

Mr. GIUFFRA. Also liaison with other investigations?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. You would also be involved—and I think this is an important area—in depositions with regard to personnel who might be targets of your investigation.

Mr. STEPHENS. Yes, that's what it indicates.

Mr. GIUFFRA. Would that be consistent with your background as a former prosecutor?

Mr. STEPHENS. Yes.

Mr. GIUFFRA. The RTC wanted the fact that Pillsbury had been engaged to remain confidential, right?

Mr. STEPHENS. Yes.

Mr. GIUFFRA. The firm did not put out a press release?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. I would like to direct your attention to the third week of March 1994. Do you recall press accounts, sir, concerning the retention of Pillsbury, and in particular you, with regard to this matter for the RTC?

Mr. STEPHENS. Yes.

Mr. GIUFFRA. Am I correct that, among other things, those press accounts discuss the fact that on February 25th, George Stephan-

opoulos, who was a senior White House official at that time, had a conversation with someone by the name of Josh Steiner who was the Chief of Staff of the Treasury Department about the fact that Mr. Stephanopoulos was angry that the RTC had hired you to conduct this Madison investigation?

Mr. STEPHENS. I believe that's correct.

Mr. GIUFFRA. If we could put up a document which is familiar to Members of the Committee from the 1994 summer hearings, this is the diary of Mr. Steiner, the Chairmen referred to at the outset of this engagement, and I would like to turn everyone's attention to the second page of the diary entry that we have before us. I'll just read the passage which is marked in yellow:

Harold and George then called to say that BC was furious.

Harold presumably being Harold Ickes and George being George Stephanopoulos.

They also asked how Jay Stephens, the former USA, had been hired to be outside counsel on this case. Simply outrageous that RTC had hired him, but even more amazing when George then suggested to me that we needed to find a way to get rid of him. Persuaded George that firing him [presumably Mr. Stephens] would be incredibly stupid and improper.

Do you recall seeing that diary entry at the time that it was publicized in the news accounts?

Mr. STEPHENS. I may have. I don't know if I have seen it in full text. I have seen references to it.

Mr. GIUFFRA. Now the news accounts were approximately in the third week of March?

Mr. STEPHENS. I believe so.

Mr. GIUFFRA. They were, I think you testified at your deposition, the press had staked out your house on a weekend?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. So there was a lot of publicity surrounding the fact that you had been retained. Prior to these press accounts, you were meeting with the client on a regular basis, right?

Mr. STEPHENS. I think that's fair to say. With regard to the work we were doing, Mr. Ericson and I, when Mr. Ericson was back in Washington, would meet with them. We would probably meet or talk on a regular basis because there was, as I indicated earlier, some urgency, particularly during February, because of the statute problem. There was a lot of contact to try and get up to speed and identify areas where we needed to focus our investigation and identify what documents we needed to collect in order to pursue that investigation. I think that followed through at least into the early part of March.

Mr. GIUFFRA. You were also receiving internal memoranda that were being prepared by your firm with regard to the engagement?

Mr. STEPHENS. Yes, I was copied on most of those memorandum.

Mr. GIUFFRA. And correspondence with the client?

Mr. STEPHENS. I believe I was copied on that, yes. To the extent there was some—for example, the memo you cited earlier.

Mr. GIUFFRA. After those press accounts in the third week of March 1994, am I correct that your role in this matter deteriorated sharply?

Mr. STEPHENS. I think if looking at——

Mr. GIUFFRA. Diminished. Excuse me.

Mr. STEPHENS. Looking at the overall relationship to the engagement, probably half or more than half of my work on this engagement was done in February and March of 1994. Subsequent to that, it diminished substantially, and probably by the summer of 1994, I was virtually disengaged from the matter.

Mr. GIUFFRA. You were no longer routinely sent drafts of the documents?

Mr. STEPHENS. I can't be sure about that. I don't know how many drafts were prepared and what I may or may not have received. Early on I would have received drafts. We had a number of meetings but my sense is that subsequent perhaps to the summer of 1994, I probably did not get copied on a lot of the analyses that were being done.

Mr. GIUFFRA. If we could put up on the Elmo a document that the Committee has prepared from billing records that we obtained from the RTC. This document reflects the hourly billings. On the left hand, it says hours, and on a monthly basis, it goes across.

Mr. Stephens, this is a document prepared by the Committee from documents we obtained from the RTC. Mr. Stephens, you are denoted in this chart in red. Am I correct that during 1995, you billed no time on this matter?

Mr. STEPHENS. 1995?

Mr. GIUFFRA. Yes.

Mr. STEPHENS. I believe I may have billed 3 hours.

Mr. GIUFFRA. In January?

Mr. STEPHENS. In January 1995, maybe it was 3½, something like that. It would have been the first couple days of January.

Mr. GIUFFRA. From then until the Rose Report was issued in late February 1996, you billed no time on this matter?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. Your time, as we can see from the red chart while you were billing, approximately 70 hours in February and over 50 hours in March, it declines then going forward. Do you see that?

Mr. STEPHENS. I do.

Mr. GIUFFRA. And that's consistent with your recollection of the amount of work that you did?

Mr. STEPHENS. Yes. After February and March, I had two or three discrete areas that I was asked to participate in; but particularly after the summer, as you can see, that participation became very minimal.

Mr. GIUFFRA. The work, according to this chart, was being done primarily by Mr. Ericson and Mr. Patterson for the remainder of the engagement?

Mr. STEPHENS. There were a lot of other individuals involved as well from the Pillsbury firm. I think Mr. Ericson was carrying a lot of the daily load, and Mr. Patterson was carrying a lot of the daily load, but there were a number of other attorneys from the firm that worked on this as well.

Mr. GIUFFRA. Did there come a time in November 1994, when you received a draft of the preliminary report to the RTC which was entitled, "Madison Guaranty Savings & Loan Association and Whitewater Development Company"?

Mr. STEPHENS. I received a copy of a preliminary report in the Whitewater matter. I presume it's the same one you're referencing. I don't know for sure.

Mr. GIUFFRA. This report concerned primarily Whitewater and its relationship to Madison Guaranty?

Mr. STEPHENS. If I remember correctly, that's right.

Mr. GIUFFRA. You spent approximately 10 to 12 hours reviewing this report?

Mr. STEPHENS. Yes. If I remember it correctly, Mr. Ericson, who had drafted the report, sent me a copy and asked me to take a look at this; let me know if you have any thoughts; what do you think.

I was not formally copied on it, if I remember correctly, but he sent me a copy to ask for my thoughts. I read through the report, which took approximately, I guess, 10 hours or thereabouts, and then provided some comments to Mr. Ericson.

Mr. GIUFFRA. The time entries the Committee has received indicate that on November 7th and November 9th, you and Mr. Ericson had two meetings. Mr. Ericson's November 9th time entry reads: "Conference Stephens on presentation to Kulka [the General Counsel of the RTC], ways to improve interim report. . . ." Does that sound consistent with what the meetings were about that you had with Mr. Ericson?

Mr. STEPHENS. That does, but I don't have a specific recollection. My memory was Mr. Ericson was going to make a presentation; or he had come back to Washington to make a presentation to Ms. Kulka, and he either stopped in and we chatted for a little while about what he was going to do or how he was going to do it; or it may be that either at that time, or when he came back from that meeting, we talked a little bit about the preliminary report.

Mr. GIUFFRA. Your meeting with Mr. Ericson was approximately an hour?

Mr. STEPHENS. I would estimate approximately an hour.

Mr. GIUFFRA. Did you give Mr. Ericson some comments on the draft that you had received of the Whitewater Report?

Mr. STEPHENS. I think I provided him some general views. As I indicated, he provided it to me to give him some thoughts, and I provided some general thoughts to him.

Mr. GIUFFRA. What general comments on the draft Whitewater Report did you provide to Mr. Ericson?

Mr. STEPHENS. I remember one went to style. Mr. Ericson's very dry sense of humor was reflected in the report. I suggested that while it was interesting, perhaps from an official report point of view, he might want to tone the humor down.

Mr. GIUFFRA. Did you give Mr. Ericson some more substantive comments?

Mr. STEPHENS. I think I indicated two or three other general areas that I might have suggested that the report didn't necessarily address.

One I think was a general area. The report didn't necessarily reflect the totality of the issues that were related to Madison because it was looking at Whitewater in isolation, rather than looking at the mosaic of real estate transactions that Madison was involved in and how Whitewater might tie into or relate to that. That was a general issue. I think Mr. Ericson recognized this was a report

on Whitewater, but my general comment or concern was that it not be taken out of context—this was only a piece or part of a mosaic, and perhaps it would be helpful to put it into that context.

Mr. GIUFFRA. Did you have a sense, from looking at the investigation early on, that Pillsbury should look at the pattern of activity surrounding and emanating out of Whitewater, out of Madison, and various McDougal entities?

Mr. STEPHENS. I think that was an area that we considered in examining how we should go about conducting this investigation. What was the most efficient way to do it; and then, obviously, what was the best way to do it in terms of developing legal theories.

From the inception, it appeared there were a number of real estate transactions that Madison was tied into, or Mr. McDougal in particular. Madison had financed a number of real estate transactions or helped develop a number of real estate transactions through subsidiaries or related companies.

So the question was, do you look at each one of these transactions separately and individually as a potential claim where there may be negligence—of course the standard was much higher now with the extender statute, intentional conduct or fraud—or do you try to collect all of them, analyze all of them as part of a pattern of activity, and determine whether or not you could establish a pattern of fraud by using the bank essentially as a source of capital or as a mechanism to develop investments in a variety of real estate transactions.

Mr. GIUFFRA. So if you looked at one transaction in isolation, you might not find a claim, but if you looked at it as part of a mosaic, you might have a claim that the RTC could pursue against persons associated with some of these transactions?

Mr. STEPHENS. Either that, or the claim in any particular transaction may not rise to the magnitude that you would want to file a claim on that one standing alone; but as part of a pattern, you may say, well, this does rise to the magnitude to justify filing a claim. If, in fact, the facts bore that out. Obviously, that was what part of the investigation was to determine.

Mr. GIUFFRA. Did you talk to Mr. Ericson about the discussion of the Whitewater transaction contained in the draft report?

Mr. STEPHENS. I believe I made some general comment that, in reading through the report, it either did not highlight or did not focus on the potential liability that might arise from a difference of equity participation by the partners in the Whitewater venture. That is, at the outset, the partners may have contributed an equal sum of money, but then over time and the development of the Whitewater venture, one of the partners continued to add capital; the other partners didn't.

Mr. GIUFFRA. That would be that Mr. McDougal continued to add capital while the Clintons did not? Was that your recollection?

Mr. STEPHENS. That is correct. And in doing that, the partners still appeared to maintain the same general equitable interest, or legal interest, in the partnership; as a consequence, one partner was benefiting substantially by the financial contributions of the other; this may have really raised a question about liability.

Mr. GIUFFRA. That did not appear to you to be a normal transaction where one partner, in a fifty-fifty partnership, put in substantially more than the other partner?

Mr. STEPHENS. Well, normal is a relative term. It probably at least raised enough questions to suggest that it would merit some scrutiny.

Mr. GIUFFRA. Did you mention to Mr. Ericson that you thought the report was too narrowly focused on an accounting analysis of documents and did not rely sufficiently on witness interviews?

Mr. STEPHENS. My memory was, or is, that I made some reference to the fact that I thought the report was essentially an accounting analysis; that it didn't reflect what witnesses would say about these transactions; and that obviously witnesses might have some added perspective or input in terms of trying to understand those transactions. I think at that time, if I remember correctly, the witnesses had not yet been interviewed, or potential witnesses had not yet been interviewed.

Mr. GIUFFRA. From your work on this matter in February and March of 1994, did you have a sense that the RTC was closely monitoring the work of the Pillsbury firm?

Mr. STEPHENS. I can only really speak to my own activity. I would say they were relatively hands-on as a client.

Mr. GIUFFRA. For example, did they indicate to you, don't make a phone call until you check with them?

Mr. STEPHENS. There were a number of times, for example—I'm just thinking of the 6(e) petition for access to Grand Jury material—where we would sketch out a course of conduct, and then the pattern would be: Should I go ahead and call now; don't call them yet; we'll give you a call and let you know if you should call; it is OK to call; so I would call; let us know what he says; and I would call back and tell them what was said; OK, now proceed to the next step. So it was, I would say from my general experience—

Mr. GIUFFRA. It was closely controlled.

Mr. STEPHENS. —it was pretty hands-on.

Mr. GIUFFRA. Did you have an understanding at the outset of the engagement that Pillsbury would be the outside counsel to the RTC?

Mr. STEPHENS. Yes. That was my understanding. The RTC traditionally hired outside counsel to conduct investigations of failed savings and loans.

Mr. GIUFFRA. And the RTC wanted the Pillsbury firm to provide guidance to the agency, correct?

Mr. STEPHENS. Well, I think they also needed resources, legal resources, obviously to conduct that investigation. While they had their own legal staff, they needed additional resources to do this, in part because of the timeframe that was involved because of the potential statute of limitations problem, and in part because of the magnitude of the investigation. They needed outside counsel essentially to handle that matter for them. But they obviously were the client and it was their responsibility.

Mr. GIUFFRA. They would make the final decision about whether to bring a suit or not?

Mr. STEPHENS. They had the responsibility and the authority to do that. Outside counsel does not have that authority.

Mr. GIUFFRA. Pillsbury, at least as you understood at the outset, was not being retained as an independent counsel to the RTC?

Mr. STEPHENS. That may be a matter of semantics. My sense was we were outside counsel. We obviously weren't independent counsel in the sense that we were a public agency, an independent counsel or a special counsel or a special public body. We were operating in a private sector context. We were retained by an agency to assist them in their investigation. They had the authority and responsibility to make those decisions.

The CHAIRMAN. I am going to ask, Mr. Stephens, with the indulgence of Senator Sarbanes, that Mr. Giuffra, because the little red light is on, be permitted to ask you one more question, so that we can keep some continuity, and then come over to the Minority side.

Go ahead.

Mr. GIUFFRA. At the outset of the engagement, did you have the sense, sir, that RTC officials were feeling a substantial amount of political pressure with regard to how they were conducting their activities regarding Whitewater and Madison?

Mr. STEPHENS. I think the RTC was feeling some pressure. They had looked at a number of these transactions before. They had, I think, in many cases concluded they didn't necessarily merit civil action. Because of the press attention, the Congressional attention, and the Congressional scrutiny, I think they recognized that these transactions needed to be re-evaluated in a more comprehensive way. So they were generally feeling some pressure to undertake a subsequent examination of these transactions.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Patterson and Mr. Ericson, I think anyone present here would note that very few questions have been directed to you. You were the lawyers in charge of this representation for the RTC. Is that correct, Mr. Patterson?

Mr. PATTERSON. Yes, sir.

Mr. BEN-VENISTE. Mr. Patterson, would you start by explaining the nature of your practice and the size and the scope of Pillsbury Madison & Sutro's law practice?

Mr. PATTERSON. At the time of this engagement, in the beginning of 1994, I believe the firm was approximately 600 to 650 lawyers. We were what was called a full-service law firm. Approximately half of those lawyers were engaged in litigation or trial work. My personal experience had been in 1994, as a trial lawyer, since my graduation in 1966 from law school.

Mr. BEN-VENISTE. So you had been in practice for more than 25 years at the time of this retention of Pillsbury Madison & Sutro?

Mr. PATTERSON. Yes, I had.

Mr. BEN-VENISTE. Was it your understanding that the RTC was looking for a large, full-service firm which could devote its energies and resources to providing a comprehensive and reliable investigation of the issues and make recommendations to the RTC?

Mr. PATTERSON. That's one of the things that they wanted, yes.

Mr. BEN-VENISTE. Did you have personal experience in banking litigation in representing the RTC or its predecessor the FDIC?

Mr. PATTERSON. Personally I had been involved, together with Bruce, in a case entitled *RTC v. Dean*, which was a case that involved the Governor of Arizona in a failed thrift. Bruce, before that, had been involved in Lincoln Savings. I had been involved in other banking matters.

Mr. BEN-VENISTE. The Dean and Lincoln Savings cases were two very substantial and well known cases brought regarding bank fraud. Is that fair to say?

Mr. PATTERSON. Yes, it is.

Mr. BEN-VENISTE. Both of those cases required very substantial allocation of resources?

Mr. PATTERSON. That's correct.

Mr. BEN-VENISTE. And both of those cases involved certain political elements, it's fair to say, is it not?

Mr. PATTERSON. They were considered by the RTC to be sensitive matters in which they wanted discretion on the part of the attorneys that they hired.

Mr. BEN-VENISTE. Indeed, is it not fair to say, that your successful representation of the RTC and the FDIC in connection with those matters was clearly the motivating factor in the selection of your firm for this assignment?

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. Mr. Ericson, would you agree with that?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Mr. Stephens, do you disagree with that?

Mr. STEPHENS. Both of them are very experienced and talented, and had worked previously for the RTC.

Mr. BEN-VENISTE. Mr. Ericson, you had very substantial prior hands-on experience in litigating matters for both the RTC and the FDIC, is that correct?

Mr. ERICSON. Yes, with one correction. I hadn't done work for the FDIC. I have done work for the FSLIC, the Bank Board, and the OTS dating back to around 1986.

Mr. BEN-VENISTE. These are all acronyms relating to banking-related litigation?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. So, Mr. Stephens, you had never tried a bank fraud case in connection with either representation of the FDIC, the RTC, the OTS, the FSLIC, the FHLBB, or any of these other agencies relating to the Federal Government. Is that right?

Mr. STEPHENS. A civil bank fraud case?

Mr. BEN-VENISTE. Pardon me?

Mr. STEPHENS. Civil, criminal, both?

Mr. BEN-VENISTE. Right.

Mr. STEPHENS. I had not tried personally a bank fraud case. I had done a number of bank fraud, or participated in or supervised, a number of bank fraud investigations.

Mr. BEN-VENISTE. The fraud matters that you had handled as an Assistant U.S. Attorney were they in the neighborhood of \$40,000, \$60,000, \$80,000 frauds?

Mr. STEPHENS. The fraud cases I was involved in as an Assistant were not significant; as U.S. Attorney and at the Department of Justice, there were a number of substantial bank fraud investigations, including the BCCI case.

Mr. BEN-VENISTE. Did you try that case?

Mr. STEPHENS. I did not try the case. The case did not go to trial.

Mr. BEN-VENISTE. The only manner in which you represented the RTC, prior to the assignment in this case, you did not try the case, is that correct?

Mr. STEPHENS. That's correct.

Mr. BEN-VENISTE. In that case you lost a summary judgment motion which meant the case was over?

Mr. STEPHENS. That was a case that Mr. Ericson and I were both involved in. He was the billing partner in that case as well.

Mr. BEN-VENISTE. And so that was your only prior experience in private practice?

Mr. STEPHENS. In the bank fraud area, correct. I had additional experience in private practice.

Mr. BEN-VENISTE. Now, you had just recently joined the firm of Pillsbury Madison & Sutro prior to this representation that the firm obtained from the RTC, isn't that so?

Mr. STEPHENS. That's correct.

Mr. BEN-VENISTE. When did you joined the firm, in November or December?

Mr. STEPHENS. December.

Mr. BEN-VENISTE. In December, and the case came in February.

Mr. Patterson, in connection with the staffing decisions were you responsible for those decisions along with Mr. Ericson?

Mr. PATTERSON. Yes, I was.

Mr. BEN-VENISTE. Let me ask the bottom line question because there's been some dancing around this. The notion put forth here by the import of the questions is that in some way, your conclusions were the result of some untoward pressure from some outside force, be it the RTC, or anyone else. Can you categorically answer that, as we get started here in reviewing what your conclusions were and the basis for them?

Mr. PATTERSON. Yes. Our conclusions, as reached in our reports, were not influenced in any untoward way by any outside source.

Mr. BEN-VENISTE. Did anyone tell you what your conclusions had to be?

Mr. PATTERSON. No, sir.

Mr. BEN-VENISTE. Did anyone review your preliminary conclusions and say that they need to be altered?

Mr. PATTERSON. No, sir.

Mr. BEN-VENISTE. Did you consider that the almost \$4 million that was expended on this project really represented unfinished business, an incomplete report, or conclusions based on inadequate investigation?

Mr. PATTERSON. No, sir, I do not. I believe we did a complete report with respect to what we were asked to do by the client.

Mr. BEN-VENISTE. Mr. Ericson, do you have any comment?

Mr. ERICSON. No. I agree with everything that Mr. Patterson said. The one thing I would note is that the almost \$4 million figure is slightly inaccurate. It's closer to \$3 million.

Mr. BEN-VENISTE. It includes work done by outside consultants and other firms, does it not, when we get up to almost four. I think \$3.8 million is the figure we had.

Mr. ERICSON. I have not seen that figure. The figure I am aware of is between \$3.1 and \$3.2 million and that figure includes outside consultants.

Mr. BEN-VENISTE. Mr. Patterson, did anyone tell you to take Mr. Stephens off the case?

Mr. PATTERSON. No.

Mr. BEN-VENISTE. Mr. Ericson.

Mr. ERICSON. No.

Mr. BEN-VENISTE. Well, how would you have reacted to such a suggestion?

Mr. PATTERSON. I would have reacted to the—well, I know how I would have reacted to the suggestion. I would have said no, that staffing of this matter is up to us and that is our determination.

Mr. BEN-VENISTE. It is correct that given Mr. Stephens' public statements when he left the position of U.S. Attorney, that it might be anticipated that his involvement would occasion some comment in the press. Were you prepared for that, Mr. Patterson?

Mr. PATTERSON. I don't think we understood, living in California, how quickly the press would take the slant that this was the Jay Stephens' investigation. Our practice in *RTC v. Dean* had been not to talk to the press, and not to make any statement about our representation or who was doing it, or anything of that nature. We continued that in this case. The client expected discretion and we determined to proceed that way.

Mr. BEN-VENISTE. Well, perhaps the magnitude of the reaction was surprising to you, but you knew, I take it, from decisions made in hiring Mr. Stephens that he had made some controversial statements upon his leaving the position of U.S. Attorney?

Mr. PATTERSON. We understood that. That did not have anything to do with hiring Mr. Stephens one way or the other.

Mr. BEN-VENISTE. I understand that. Obviously, you did, in fact, hire Mr. Stephens.

The statements that were made at the time of the revelation that Mr. Stephens was working on this project included statements that Mr. Stephens had expressed political ambition. Mr. Stephens, had you, in fact, indicated that you were open to consideration of running for the U.S. Senate from the State of Virginia?

Mr. STEPHENS. During the summer months of 1994, late spring and early summer, I considered whether or not I would be interested in serving as a candidate for the U.S. Senate in Virginia. After thinking that through and exploring it briefly, my wife and I decided with a small family that we would be better served by being in the private sector, perhaps private practice. I had served a long time in public service and my interest was to focus on my family and spend some time in the private world.

Mr. BEN-VENISTE. With respect to your announced receptivity to entering the world of politics, had you not set up an exploratory committee for a run at the U.S. Senate from the State of Virginia?

Mr. STEPHENS. I'm not sure it was an exploratory committee, but there was a little exploratory effort to take a look at that.

Mr. BEN-VENISTE. According to The Washington Times of December 15, 1993, "Mr. Stephens has set up an exploratory committee and handed out pamphlets but he has not committed."

Mr. STEPHENS. It is fair to say that I had a little pamphlet, as we were looking at this, to have some biographical information. I am just not sure technically whether there was an exploratory committee actually set up or not, but I view that as sort of a technical point. The fact was I had taken a look at this, and people had asked me to take a look at this. I did some preliminary analysis of it, talked to a few people, and—

Mr. BEN-VENISTE. OK, I do not think we need to go through all of that detail.

Mr. STEPHENS. —I decided that this was not really the avenue that I wanted to pursue.

Mr. BEN-VENISTE. What I would like to explore is the fact that you were active in Republican politics, and, indeed, you held some position in local Republican politics as a county committeeman; is that correct?

Mr. STEPHENS. I am a member of the Fairfax County Republican Committee. I am not sure exactly when I joined that, but there's about 500 or 600 people that serve on that committee, so it's hardly a small group of people.

Mr. BEN-VENISTE. In connection with your exploratory run for a nomination for the Senate from the State of Virginia, was Kenneth Starr also an individual who had expressed an interest in running for the same seat?

Mr. STEPHENS. I think you'll have to talk to Mr. Starr.

Mr. BEN-VENISTE. You don't remember?

Mr. STEPHENS. Well, my sense was there were rumors that he might have an interest as well, but I'm not sure how extensive that interest was.

Mr. BEN-VENISTE. Was he one of the people you talked to?

Mr. STEPHENS. I probably talked to Mr. Starr at one point during the course of the summer.

Mr. BEN-VENISTE. In connection with the possibility of a run for the Senate seat?

Mr. STEPHENS. Well, that was one area, yes.

Mr. BEN-VENISTE. And in the course of your representation of the RTC, did you have occasion to talk with Mr. Starr at any point?

Mr. STEPHENS. I think on just one occasion. Shortly after his appointment, I made a brief phone call to him in which I said either congratulations or commiseration, but good luck and do the best job you can.

Mr. BEN-VENISTE. Your responsibility, according to these billing records, was for liaison, to some extent, with the Office of the Independent Counsel. This 6(e) is not very mysterious. What 6(e) means is that there are materials in the possession of a prosecutor's office which may or may not have been the subject of a Grand Jury subpoena. And your job, in part, according to our review of your time records, seems to have focused in the early stages primarily on the question of obtaining records from the Office of the Independent Counsel. Is that fair to say?

Mr. STEPHENS. One of the primary activities that I was involved in during the February to May period was the preparation of a petition for access to Grand Jury records held by the Special Counsel and the FBI.

Mr. BEN-VENISTE. Is it fair to say that after March 1994, that your involvement representing the RTC was relatively minimal.

Mr. STEPHENS. I think that's correct.

Mr. BEN-VENISTE. According to our records, you spent a total of 339 hours and some fraction billed to the Madison investigation for the RTC. Do you take issue with that number?

Mr. STEPHENS. You have the records, I don't.

Mr. BEN-VENISTE. What was your hourly billing rate for civil litigation at that time when you joined the firm?

Mr. STEPHENS. I think my billing rate was approximately \$285 an hour.

Mr. BEN-VENISTE. Mr. Patterson, is it correct that a negotiation was had with the RTC whereby reduction in the hourly billing rates was effected?

Mr. PATTERSON. That's correct. I think Bruce handled that.

Mr. BEN-VENISTE. Is that correct, Mr. Ericson?

Mr. ERICSON. Let me explain a little. We had a contract with the RTC, as does every firm that represents it, and that contract involved a discount off our normal rates.

Mr. BEN-VENISTE. So according to our records, Mr. Stephens was billed out at \$200 an hour. Is that correct?

Mr. ERICSON. That was true for part of the engagement. Our contract expired in the normal course in October 1994, and we renegotiated it, and we renegotiated for a higher rate thereafter.

Mr. BEN-VENISTE. I am using a conservative \$200 figure in terms of Mr. Stephens' involvement. I come to a number at \$200 in dollar amounts of \$67,940 that was billed and I presume paid by the RTC with respect to Mr. Stephens. If you subtract the months of February and March, after which, by Mr. Stephens' account, he did minimal work for the RTC, you're left with 293 hours at \$200 an hour, again, a conservative estimate in view of the possible fluctuation in the rates, which comes to \$58,650 by my arithmetic.

Mr. STEPHENS. I'm not sure those calculations are correct.

Mr. BEN-VENISTE. Well, they may not be.

Mr. STEPHENS. You indicated the total hours were?

Mr. BEN-VENISTE. 339.75.

Mr. STEPHENS. If you subtract February and March, there was approximately I believe 135 or 140 hours in February and March?

Mr. BEN-VENISTE. 146 hours, which is 193, you are right. It only proves once again my arithmetic is wanting.

Mr. STEPHENS. Approximately half of the time was spent in February and March; if the total was \$67,000, about \$30,000 was spent from April until December.

Mr. BEN-VENISTE. Well, maybe a little more, but April to December, let's even call it \$30,000, OK.

One of the things that you all looked at was Mrs. Clinton's involvement in representing the Madison Guaranty Savings & Loan. There has been a challenge here to the notion that her 60 hours spent over 15 months, was not minimal. In fact, your conclusion was that clearly Mrs. Clinton's involvement in representing Madison, when she was at the Rose Law Firm some 10 or 11 years ago, was relatively minimal. Is that correct, Mr. Ericson?

Mr. ERICSON. Well, I think I tried to stay away from adjectives. It was what it was. It was on the order of the magnitude you have

indicated, and that amount of time was spread out over roughly 15 months.

Mr. BEN-VENISTE. The total amount of her billing, 60 hours at \$100 an hour was \$6,000, about a tenth of what Mr. Stephens' billed out over a shorter period of time. I'm not taking issue with the question of relative minimality here, but I think we need to put into context what has been I think blown out of proportion in terms of Mrs. Clinton's involvement in the representation of Madison Guaranty Savings & Loan, lo these 11 years ago.

Mr. Patterson, is it fair to say that Mr. Stephens was not ignored or deliberately cut out of anything that he asked to be able to do in connection with this representation?

Mr. PATTERSON. That's correct.

Mr. BEN-VENISTE. Mr. Ericson, is that your view?

Mr. ERICSON. I have no contrary view. I should add that staffing decisions were made by Mr. Patterson, not myself.

Mr. BEN-VENISTE. Mr. Stephens, was there some deposition that you expressed the interest in taking, or some matter that you expressed a desire to become involved with that you were foreclosed from pursuing by your partners?

Mr. STEPHENS. Mr. Patterson handled all the staffing decisions. I indicated I was ready, willing, and able to do whatever I needed to do to assist him. It was his choice as to whom he wanted to handle what aspects. I did not reach out specifically and demand that I do something. He was a senior partner of the firm, the Vice Chairman of the firm, head of the firm's litigation, and obviously someone who was in charge of this engagement.

Mr. BEN-VENISTE. Mr. Stephens made the point that he thought it would be a good idea to explore the totality of the different loans that emanated from Madison Guaranty Savings & Loan, and not focus simply on the Whitewater transactions. Is that something you ignored doing, Mr. Patterson?

Mr. PATTERSON. No, sir. In fact, one of the documents that we were shown this morning, the case plan, dated February 16, 1994, on the first page, paragraph (a) says that we are going to do exactly that. That we will be looking for RICO violations and for overall connection among all of the various real estate loans. So at that point in time, 1 week into our engagement, that was very definitely our plan.

Mr. BEN-VENISTE. Indeed, according to what we have seen by way of your work product, you have made an exhaustive review of the transactions that emanated from Madison Guaranty Savings & Loan and have looked at the picture in its totality. Mr. Ericson, do you disagree with that?

Mr. ERICSON. No. As Mr. Patterson has indicated, from the outset we thought it important to look for a pattern.

Mr. BEN-VENISTE. Mr. Stephens had said something about commenting on the first draft Whitewater Report about the relative contributions to capital that were made between the Clintons and the McDougals. I take it what he meant was the contributions to the expenses as the investment matured over the years. But even taking that, he talked about contribution to a partnership. When did it stop being a partnership?

Mr. ERICSON. Whitewater was a corporation in 1979 and thereafter, so technically speaking, the Clintons and the McDougals were shareholders in the corporation, they were not partners in a partnership.

Mr. BEN-VENISTE. In connection with your mandate, you were looking at whether funds could be recovered through litigation or otherwise as a result of these transactions at Madison. Of course, you wanted to look at all of the transactions. Looking at the Whitewater aspect of this, at the very most, how much money could be said to have been lost by Madison Guaranty Savings & Loan as a result of anything to do with the Whitewater investment?

Mr. ERICSON. It will take me a moment to answer that as there are some complexities associated with that. That's addressed in our Supplemental Report on Whitewater in which we make two points. Maybe it would be helpful if I could just turn to that for a moment. At page 7 of the Supplemental Report from December 1995, there is a chart at the top of the page that shows two things. It shows deposits into Whitewater and then it shows disbursements out of Madison Guaranty, and I think the numbers you're seeking to get from me are indicated by that chart.

Mr. BEN-VENISTE. How much then would you say that in the most conservative analysis could have been lost as a result of a Whitewater investment?

Mr. ERICSON. Well, very little money was ever traced from Madison to Whitewater. We're talking five figures at most. As we point out in the report, it might be possible to argue that losses to Madison were larger than that, and that's the thrust of this chart we're looking at. But there are a number of difficulties associated with such an argument.

Mr. BEN-VENISTE. I understand.

Now with respect to Mr. Stephens' point, in fact looking at the Whitewater transaction in such detail was really well beyond that which normally would have been requested if the only interest was pecuniary or financial or in getting money back. There was another element to doing an exhaustive investigation, was there not?

Mr. ERICSON. That's true.

Mr. BEN-VENISTE. So because of the political side of this, the importance of looking at all of this very, very carefully was justified where financially it never would have been justified without such political interest. Is that fair to say?

Mr. ERICSON. The word "political" gives me a little trouble, as I understand our client's desires. And I think as the former General Counsel, Ellen Kulka testified, the agency was concerned with its reputation. It felt it had to do a thorough job or it would be criticized here or elsewhere.

Mr. BEN-VENISTE. I will accept that. I used "political" maybe too broadly in that regard. But in terms of the dollars involved, quite clearly the amount that was expended to look at all of this dwarfed the amount of any reasonable recovery?

Mr. ERICSON. From Whitewater certainly.

Mr. BEN-VENISTE. Now from Madison Guaranty Savings & Loan itself, you are looking at an individual who had the primary responsibility, according to your findings for anything untoward or irregular that occurred, and that was Mr. McDougal, correct?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Mr. McDougal, of course, had been prosecuted and acquitted once in connection with transactions associated with Madison and was impecunious certainly by the time he faced these other charges where counsel has been appointed to represent him rather than retained counsel. Is that fair to say?

Mr. ERICSON. That's right. He'd been discharged in bankruptcy. It was a no-asset bankruptcy.

Mr. BEN-VENISTE. Mr. Stephens, you're looking at discharge from bankruptcy issues. Were you foreclosed from doing that?

Mr. STEPHENS. Early on in the inquiry, I think we did a preliminary look at the various, the bankruptcies and settlements which might preclude recovery. But associates from Los Angeles, if I remember correctly, were assigned to that task, and that was later assumed by Mr. Patterson, or by those associates under Mr. Patterson's supervision.

Mr. BEN-VENISTE. Mr. Ericson, viz-à-viz the conversation that Mr. Stephens has indicated he had with you after he reviewed the first draft on the Whitewater Report, what is your recollection of that conversation?

Mr. ERICSON. I remember parts of what Mr. Stephens has testified to, and frankly, I don't remember other parts of it.

Mr. BEN-VENISTE. What do you remember Mr. Stephens saying?

Mr. ERICSON. I remember the part about my sense of humor. I also remember to some extent the part about a discussion of witness interviews. The rest of what he said I simply don't remember.

Mr. BEN-VENISTE. You don't remember him saying it?

Mr. ERICSON. That's right.

Mr. BEN-VENISTE. So what was your take-away from that conversation, which I take it occurred some time in the late fall or early winter of 1994?

Mr. ERICSON. Well, as I have just said, I took away the idea that I probably ought to tone down the sense of humor, and that it might be a good idea to talk to a few more witnesses.

Mr. BEN-VENISTE. Did Mr. Stephens ever express any shock or alarm that you were headed in the wrong direction, that you were off course, that he felt pressure was being put on you somehow?

Mr. ERICSON. No, nothing of that sort.

Mr. BEN-VENISTE. Mr. Patterson, did you ever receive such a message from Mr. Stephens?

Mr. PATTERSON. No, I did not.

Mr. BEN-VENISTE. In connection with the conversation you had after Mr. Stephens was sent and reviewed this draft, did he follow up with a written memorandum?

Mr. PATTERSON. No.

Mr. BEN-VENISTE. Did you ever receive anything in writing from Mr. Stephens by way of memorandum or otherwise, commenting on any draft, any conclusion, or any procedure that you were undertaking in discharging your responsibility to the RTC?

Mr. ERICSON. No. But I should add that among partners, we would not typically communicate by writing.

Mr. BEN-VENISTE. So this is the only instance where you recall Mr. Stephens making any suggestions with respect to the report?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Mr. Patterson, did you have any conversations with Mr. Stephens wherein Mr. Stephens claimed that he had a problem of any nature with the way you were going about business or the tentative preliminary conclusions that you reached or indeed the final conclusions?

Mr. PATTERSON. No, I did not.

Mr. BEN-VENISTE. I see that my time has expired. I think it is important to go into some of these conclusions and what the basis is for them, but I'll do that in the next round, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. I'll be brief.

Let me try and understand the structure within the organization of Pillsbury Madison & Sutro relative to who was the contact person with the RTC.

Mr. PATTERSON. Well, I would have been the principal contact with the RTC.

Senator MURKOWSKI. Who would have been the RTC counter? In other words, who contacted you with regard to the investigation that you were doing?

Mr. PATTERSON. Mark Gabrellian.

Senator MURKOWSKI. Did Mark Gabrellian specifically dictate the scope of your review?

Mr. PATTERSON. No, he did not.

Senator MURKOWSKI. Did he specifically direct or redirect activities associated with your review?

Mr. PATTERSON. No, he did not.

Senator MURKOWSKI. So you had complete authority, flexibility, control, in the manner in which you proceeded to bill 385 hours?

Mr. PATTERSON. We did not have complete control. We had control in the sense of how we went about our investigation. We would discuss with the client what our recommendations were as to how the investigation should be handled, where the focus should be placed, and in what order we should proceed.

Senator MURKOWSKI. And the client agreed with you in all cases?

Mr. PATTERSON. I believe they did, yes.

Senator MURKOWSKI. So you can't recall an instance where Mr. Gabrellian, on behalf of the RTC, directed you into one area viz-à-viz another area?

Mr. PATTERSON. No.

Senator MURKOWSKI. This is important because your firm billed the Federal Government for about \$4 million. Is that right?

Mr. PATTERSON. I would have to defer to Mr. Ericson who says it was in the neighborhood of \$3.1 to \$3.2.

Senator MURKOWSKI. All right, \$3.1 to \$3.2, whatever it was, it was a significant amount of money.

At what point did you satisfy yourselves that this investigation was complete and adequate as opposed to the realization that we have an extensive witness list of prominent people and people who are knowledgeable in various aspects that weren't interviewed?

Mr. PATTERSON. At what point did we satisfy ourselves that our investigation was complete?

Senator MURKOWSKI. That's correct.

Mr. PATTERSON. That occurred in stages with respect to different phases of the investigation.

Senator MURKOWSKI. Yes, but you had to make a decision that you felt within your organization that you had adequately satisfied yourself as to the authenticity with regard to what your job was specifically directed to do.

I find it extraordinary that we are looking at a list of witnesses not interviewed by your firm, yet we have heard from the Minority that your report is complete and all encompassing relative to the bottom-line recommendation that was made in your report, yet these people weren't contacted. I'm wondering why you didn't contact them, obviously you can't contact everybody, but why you felt your report was complete? Because I intend to go into some of the specific names here and information relative to the germaneness of information that they had that you didn't seem to see fit was appropriate or worthwhile pursuing.

Mr. PATTERSON. Well, to answer your first question first, at what time did we feel that we were complete with respect to the investigation. I would say that would have been at the end of 1995 when the Extenders Statute was running out. We had no more time, we had to make a final report and final recommendations to the RTC and either commence litigation or, as we did in the case of Jim Guy Tucker, obtain an extension of the statute of limitations.

Senator MURKOWSKI. Why didn't you request an extension?

Mr. PATTERSON. We did with respect to Jim Guy Tucker.

Senator MURKOWSKI. Just that portion. But you indicated you were up against a time sequence. Did you make a qualification in your final report, in other words, a disclaimer that this did not necessarily represent a total capability of contacting groups or some question as to the inadequacy of your report?

Mr. PATTERSON. I believe, Senator, that there are always witnesses you could talk to.

Senator MURKOWSKI. I am talking about whether or not you made a qualification.

Mr. PATTERSON. No, we did not. Because at that point in time, we had reached the conclusion that based on what we had been assigned to do, we had sufficient information to determine whether there was cost-effective litigation to be undertaken.

The CHAIRMAN. Would the Senator yield for a question?

Senator MURKOWSKI. Very briefly, Mr. Chairman, yes.

The CHAIRMAN. Why wouldn't you have interviewed Beverly Bassett Schaffer? I looked at this list and this goes to what Senator Murkowski's talking about. We are not talking about some incidental—I mean, you have this thing, it's public, it's big, and it's sensitive. You didn't even interview her. Why?

Mr. PATTERSON. Senator, your first question is would Beverly Bassett Schaffer have shown us that money was spent or taken from Madison Guaranty, that there was a loss to the institution. Second, that it was the result of an intentional or fraudulent act. And finally that that act resulted in some loss to the institution. We determined that with respect to that transaction, none of those things existed.

The CHAIRMAN. You reference in your report conversations between Beverly Bassett Schaffer and the First Lady, and you have

it and you do this continually, you reference certain people and you don't even interview them. You don't find an inconsistency?

Mr. PATTERSON. No, I do not.

The CHAIRMAN. Well, we will get into that. We are going to develop it a little further.

Senator, I thank you for your indulgence.

Senator MURKOWSKI. Thank you very much, Mr. Chairman.

You are familiar with Marlin Jackson, the Bank Commissioner who used his position and influence as Commissioner, to use his letterhead to request the transfer of the Clinton loan to the bank that he was formerly associated with?

Mr. PATTERSON. I think Mr. Ericson would be more familiar with that than I am.

Senator MURKOWSKI. Well, all right, Mr. Ericson.

Mr. ERICSON. I'm familiar with Mr. Jackson. I know he used his letterhead. I'm not sure I agree with the rest of what you said.

Senator MURKOWSKI. What would you agree with, because we have the actual copy of the letterhead, and the letter states, to his former associate in the bank that he formerly headed, "Please take care of the circumstances on the principal and interest on the loan." Do you think that was an appropriate thing for a Bank Commissioner to do? Do you think that's good banking business?

Mr. ERICSON. To use his letterhead in that way? No, I think that was ill advised on his part.

Senator MURKOWSKI. You think it was ill advised?

Mr. ERICSON. On his part, yes.

Senator MURKOWSKI. All right. You didn't think that there was any pressure being brought to bear relative to him stating that this loan should now be taken care of at his former bank? What I am getting at is, obviously you didn't choose to interview this gentleman. It was evident that there was pressure being brought to bear, the impropriety relative to using the stationery and you did not interview him.

Mr. ERICSON. We didn't interview him. I can't see any connection between it and any losses to Madison Guaranty.

Senator MURKOWSKI. You didn't interview Mr. Norton, a Clinton accountant, either, did you?

Mr. ERICSON. That's true.

Senator MURKOWSKI. And there was no relevance there to your responsibility because I think it's fair to state that Foster, in his notes, indicated that the Clintons' tax situation was, "A can of worms." You didn't see fit to interview Norton?

Mr. ERICSON. That's true, we didn't interview Norton.

Senator MURKOWSKI. Why?

Mr. ERICSON. We had no interest in the Clintons' tax situation because again that was not something that the RTC could sue over. It's not something that the RTC could bring a lawsuit about. That's between the Clintons and the IRS.

Senator MURKOWSKI. I'm curious to know, Mr. Stephens, relative to your deposition, on page 133, this was asked:

Question: Do you know that they dictated to your firm that certain things should be looked at and other things shouldn't be looked at with regard to Madison?

Answer: I am not sure how to take your word "dictated." There would be times when they said, call these people but don't call those people. Don't make this phone

call until I call you. It was a very close, hands-on, do this but wait until we give you the authority to do so.

So it was a closely controlled matter from what I saw. I don't want to characterize it—it's not fair for me to characterize it one way or the other. After all, in private practice, the client is the client. And it is their responsibility and they seek outside counsel to assist them in that. They had every right to provide guidance and direction to outside counsel. You know, Pillsbury was not an independent public agency or an independent counsel or an independent prosecutor or Congressional committee or anything else looking at this. It was outside counsel retained by an agency to assist them in doing what they wanted to accomplish.

Mr. Stephens, I can only assume you stand by this statement?

Mr. STEPHENS. This statement applies to what I saw from my relationship to the agency. It was a hands-on agency. With regard to 6(e) areas and filing the 6(e) petition, with regard to contacts with the Independent Counsel, it was very closely monitored—we don't want you to call them yet; it's OK to call them now, we'll give you the phone number now; well, wait until tomorrow to call them and then tell us what they said—it was closely monitored.

But the second part of your question goes to the broader concept, and that is simply in my view, we were outside counsel. It was their responsibility and their authority to make the final judgments. You should not necessarily assume from that comment that they exercised that authority or judgment in any way to infringe on the independence of Mr. Patterson or Mr. Ericson in making their judgments.

Senator MURKOWSKI. You know, it appears that Mr. Stephens was removed from some areas of responsibility. Is that your opinion, Mr. Stephens, in this case?

Mr. STEPHENS. Well, Mr. Patterson arranged the staffing of the matter. I participated, as I think I have testified, substantially in February and March, and thereafter in selected areas including the 6(e) petition, in interviewing or considering potential forensic accountants, and looking at a couple of other issues—the statute of limitations issues. So there were selected areas that I was asked to take a look at. But the bulk of the work was moved to the West Coast to Los Angeles and San Francisco.

Senator MURKOWSKI. Were there any communications between yourself and Mr. Patterson where you suggested certain areas be pursued and Mr. Patterson suggested otherwise, or said, well, the Los Angeles or West Coast areas will take care of that?

Mr. STEPHENS. I think the answer to that is probably not; the dynamic didn't work quite that way. Mr. Patterson was the senior partner on the project. He was the manager of the project, and as it evolved, staffing was increased on the West Coast.

Senator MURKOWSKI. That was not exactly my question though. You had certain facets of this. You had it at one time, and then it gradually diminished, your activities lessened. At times, did you indicate specific recommendations to Mr. Patterson that were not followed?

Mr. STEPHENS. I think that the answer to that is probably no, not with regard to the areas that I handled.

Senator MURKOWSKI. How about other areas that you suggested?

Mr. STEPHENS. Let me correct one thing. It may be that, for example, with respect to the 6(e) petition, I probably took the position that it was important to file that or take some action relatively

soon to get access to these documents. You really could not do the investigation until you got access to the documents.

Indeed, when we were retained, one of the first items we were asked to do was to prepare the arguments to get access to these documents. It did seem that after a short period of time, the pressure came off to get access to these documents. Indeed, it was not until I think June before a consent order was negotiated to get access to the documents.

I probably pushed a little harder to say why don't we move to file the petition and engage in a negotiation with the Independent Counsel more quickly so that we can get access to these documents. There may have been some dynamic back and forth on that with Mr. Patterson, who was dealing more closely at that point with the Independent Counsel.

Senator MURKOWSKI. My last question because I'm out of time. Mr. Patterson, under any set of your own personal recollections, was there any attempt by anybody in the RTC or in the Administration to influence your scope of activities associated with the responsibility of your firm to do this?

Mr. PATTERSON. No, sir.

Senator MURKOWSKI. Mr. Chairman, I remember a month ago we had a little discussion, Senator Sarbanes and I specifically, on the completeness of this Pillsbury Madison & Sutro Report, and to what extent the Committee should rely on the completeness and thoroughness of that report.

It is obvious for reasons that I hope this Committee will pursue, that they were very selective in analyzing and interviewing specific witnesses, and I find that troubling.

You know, as I sit here today, I am just astounded that we find specific people who have intimate knowledge of various aspects of this, the realization that the taxpayers have lost \$60 million, we've paid this firm over \$3 million. Why you didn't simply sit down and review the extensive Bank Examiners Reports, which suggest anything but the findings that your report shows, is beyond me.

I can only look at those in the RTC and question their motivation in the manner in which this was directed because if you go into the Bank Examiners Reports, you are going to find the real expertise associated with the analysis that is appropriate for this kind of investigation, recognizing the exposure of the taxpayers of this country with the failure of that organization.

I think your report is shameful, I think it is inadequate, I think it is a ripoff of the taxpayers' money, and I am very disturbed to find that pressure was brought to bear within your organization in directing specific activities from one partner to another.

I would like to see a further investigation of this process because there's just too many unanswered questions here, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Patterson, obviously you should be given a chance to respond to that. I mean, I think that's a gross misstatement of what the situation was, and I think you ought to, in effect, review on the public record what the charge was to your firm.

You were advising the RTC what the scope of their authority was in the situation, and my understanding is, to the extent that the RTC had any role to play, you did counsel them on the totality of the issues in a very thorough and comprehensive way.

But I think you obviously need to address that closing comment, and I'll yield you some time in order to do that.

Mr. PATTERSON. Let me say this with some background and answer the Senator's question, if I can call it a question.

We were originally contacted to do an evaluation and examination of Madison Guaranty I believe in either late January or early February of 1994. We were told that the statute of limitations with respect to any claims dealing with Madison Guaranty would run on February 28, 1994, unless extended by Congress. It was extended.

Well, at that point in time, all I could do was bring as many bodies to bear on this as I possibly could in order to get something that would satisfy Rule 11 of the Federal Rules of Civil Procedure, were we to try to file an action before February 28th.

We had six partners I think originally and I am not sure how many associates who were assigned to that task. They were in Los Angeles, San Francisco, Kansas City, Washington, DC and all over the place trying to get that done by that time.

The statute was extended by Congress, but it was extended only as to fraud or to other intentional misconduct. So from that point forward, our charge was to determine whether cost-effective civil litigation existed for the RTC in which they could recover money based on torts which were either fraud or involved intentional misconduct.

In that regard, very early on in our investigation, we did review the Bank Examiners Reports from the examinations that had been done. We reviewed the prior reports of the investigations which had been done by another law firm in, I believe it was Memphis, Tennessee, what was known as the Garrish Report. We reviewed those. During the course of our investigation, I believe we interviewed the bank examiners who were involved in the examinations. And I think that we did look into that. In fact, we were guided to a great degree by what we found in those documents.

Senator MURKOWSKI. I'd certainly draw a different conclusion.

Senator SARBANES. I don't think because you draw a different conclusion you ought to disparage the competency or the work of this law firm. I don't think it's fair to them. You know, you want to put differing interpretations on things and obviously you're going to do that if you choose to, but I don't see why you ought to try to tar them in their work.

Senator MURKOWSKI. If I may respond, I cannot understand why they did not put a disclaimer on the report that they were up against the statute of limitations so that this Committee could basically satisfy itself that the report wasn't complete and they were up against the statute of limitations to finish it. When one looks at those examinations and the results of the recommendations of this firm, Pillsbury Madison & Sutro, you're going to come to a different conclusion.

Senator SARBANES. Well, once the Congress took action, you were no longer up against a deadline, isn't that correct?

Mr. PATTERSON. That's correct.

Senator SARBANES. And later I gather toward the end, when that arose, you got tolling agreements, did you not, that allowed you to continue with certain limited portions of your inquiry?

Mr. PATTERSON. With respect to that portion of our investigation, where we thought cost-effective litigation existed, we obtained a tolling agreement.

Senator SARBANES. That's right, so you were not up against that deadline as a consequence?

Mr. PATTERSON. That's correct.

The CHAIRMAN. If I might make an observation, and I think it is fair to say. Don't run the clock—it should not be charged to my colleagues here. I think that there are some people who took this report and heralded it as a vindication of all of the activities that took place in regard to Whitewater, in regard to the operation of Madison, in regard to all of the transactions surrounding it.

They said, well, here's this law firm investigation headed by a Republican, Jay Stephens, and it vindicates and clears everybody of wrong doing, nothing wrong, \$4 million spent. Now that's basically the laymen's interpretation of the story given to the public.

Indeed, the fact is that Mr. Stephens only worked for a rather short period of time that he put any substantial time in, and that after March 1994, it would appear that there's almost no time, and certainly by early 1995, there's nothing at all, nothing. He wasn't the supervising, managing partner who approved, et cetera, as was reported. So I think that is part of the misconception that was not your fault, but that certainly was what people spun. Jay Stephens cleared everybody of wrongdoing.

I'll make this point, and I thank my colleague for going along with giving me this opportunity to express something that I have observed here. Second, there is the question that this report was very limited. You were limited to ascertaining whether or not it would be cost effective to bring a suit, not with respect to was anyone exonerated, were their actions correct, were their decisions correct, was their fraud involved. Because, indeed, there was fraud involved in many transactions. Is that correct, when you look at this?

Mr. PATTERSON. That's correct.

The CHAIRMAN. Lots of fraud. But you determined notwithstanding that there was lots of fraud, that who do you sue and make it cost effective because of time, money, et cetera. And so you might have a whole list of people where there's potential liability but to bring a lawsuit, even if you win, what do you win; is that right?

Mr. PATTERSON. That's correct, Senator.

The CHAIRMAN. So I just make that point. Then I would like to later on, on my time, get back to examining a couple of aspects that I think need to be cleared up. But I thank my colleagues.

Senator SARBANES. Well, thank you, Mr. Chairman.

The one thing out of that discussion that I find interesting is that Mr. Stephens' work of about 190 hours or so over a 10-month period that was subsequent to February and March is being treated as minimal. Whereas it's asserted repeatedly in these hearings that Mrs. Clinton's work of 60 hours over 15 months, less than one-third the amount of that time, over a longer period, is not treated as minimal. And I think it's very helpful to have that on the record.

I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you.

And I might as well correct my prior arithmetic for the minimal portion of Mr. Stephens' representation of those 193.25 hours over 10 months at \$200, which is a conservative rate, the arithmetic checked now by Lance Cole, my accountant, is \$38,650 as compared to the \$6,000 and change Mrs. Clinton—

The CHAIRMAN. How much, \$38 what?

Mr. BEN-VENISTE. \$38,650. The total amount, if you had included all of the hours I have given before, it's \$68,000 dollars. So I think when we compare legal billing in one aspect and call it minimal, we ought to have that in some kind of context. And I don't suggest that it was not relatively minimal that Mr. Stephens spent that amount of time. What was your normal monthly production in billable hours during 1994, Mr. Stephens, do you remember?

Mr. STEPHENS. Probably somewhere in the neighborhood of 140.

Mr. BEN-VENISTE. 140 hours per month so—

Mr. STEPHENS. Actually, work time might have been double that, but billable time was probably about that.

Mr. BEN-VENISTE. Indeed, there was time that you spent, and we can go through these records, discussing the final report and other aspects of this investigation representation that you did not bill time to. Isn't that so?

Mr. STEPHENS. I'm sorry, I didn't understand the question.

Mr. BEN-VENISTE. There was time that you spent that was not reflected in bills sent to the client on the RTC matter?

Mr. STEPHENS. To what are you referring?

Mr. BEN-VENISTE. We have about a dozen if you would like to go through them. I am sure you have gone through your records and the conversations and conferences that you had regarding different issues that are reflected in other lawyers' billing records, conference with Jay Stephens, meeting with Jay Stephens, discussion about so and so.

Mr. STEPHENS. I haven't seen those.

Mr. BEN-VENISTE. You have not seen the billing records? Maybe we will get to that a little bit later and we can go through that.

The implication again by the Majority is that Mr. Stephens was somehow pulled off the case, pulled away from the things that he wanted to do or which were appropriate but he wasn't allowed to do. Did that happen, Mr. Patterson?

Mr. PATTERSON. No, it did not.

Mr. BEN-VENISTE. Mr. Ericson.

Mr. ERICSON. No.

Mr. BEN-VENISTE. The conclusions that you reached and put forward involved conclusions about activities of others and involved conclusions about fraud. Mr. Ericson, what was your conclusion about whether Mr. or Mrs. Clinton engaged in fraudulent activity or whether the Rose Law Firm engaged in fraudulent activity?

Mr. ERICSON. We found no evidence of either.

Mr. BEN-VENISTE. No evidence of fraud either by the Clintons or the Rose Law Firm in connection with the matters under investigation; is that correct?

Mr. ERICSON. That's right.

Mr. BEN-VENISTE. Now with respect to witnesses who were not interviewed, there were different reasons for not interviewing dif-

ferent witnesses, and we can get to that. But did anyone tell you, Mr. Ericson, that there were witnesses you could not interview?

Mr. ERICSON. No, never.

Mr. BEN-VENISTE. Mr. Patterson.

Mr. PATTERSON. No.

Mr. BEN-VENISTE. Mr. Stephens, do you know of any example of a witness who Mr. Patterson or Mr. Ericson wanted to interview but were not allowed to interview?

Mr. STEPHENS. I have no personal knowledge of their discussions about—

Mr. BEN-VENISTE. Let me ask you this.

Mr. STEPHENS. Let me finish my answer.

Mr. BEN-VENISTE. Do you have any reason to believe that the conclusions reached by the Pillsbury Madison & Sutro firm were not on the basis of a full, complete, and honest evaluation of the evidence available?

Mr. STEPHENS. I have no basis to agree or disagree with that statement. I know Mr. Ericson and Mr. Patterson are outstanding attorneys, they are people who conduct themselves with the highest ethical standards, but I have no factual basis to know whether that statement is correct.

Mr. BEN-VENISTE. You have not read the final reports in detail, have you?

Mr. STEPHENS. That's correct.

Mr. BEN-VENISTE. And in your deposition, you acknowledged that you had no basis upon which to challenge any conclusion because you hadn't even read the final reports, much less reviewed the underlying material. Isn't that fair to say?

Mr. STEPHENS. I was not asked to read the final—I take that back. I was asked to read the final reports. I did not read the final reports. I did not write the reports. I did not have a hands-on basis for the underlying material so I had no basis for providing comments with regard to—

Mr. BEN-VENISTE. I can understand why you did not want your name associated with the authorship of the reports if you did not perform the work. That is understandable and I think Senator D'Amato makes a very good point. We don't challenge that. If it was called the Stephens Report, it was not because Pillsbury Madison & Sutro called it the Stephens Report. Correct, Mr. Patterson?

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. And it is not because the RTC called it the Stephens Report, is that correct?

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. With respect to the matters before you that you were being questioned about, Marlin Jackson, who was the Bank Commissioner, had a letter on his official letterhead as Commissioner, introduced here, but we have had the testimony that put that into context. That testimony showed that Mr. Jackson dictated a letter to his secretary and the secretary signed his name and the secretary put that on the official stationery. So to the extent that has anything to do with the price of beans here, it is a non-issue.

With respect to Beverly Bassett Schaffer, now was there anything associated with the representation by the Rose Law Firm on

the regulatory matters that involved the State Commissioner of Securities, that cost Madison any money?

Mr. ERICSON. No. The preferred stock offering never occurred.

Mr. BEN-VENISTE. And indeed the research into that was entirely appropriate as far as you could see that was done by the Rose Law Firm under the supervision of Mrs. Clinton and performed by Mr. Massey. We've gone through all of that.

The introduction of Ms. Bassett Schaffer's name does raise a point with respect to this assertion that the taxpayers lost \$60 million as a result of Madison's failure. If Ms. Bassett Schaffer's recommendation, 2 years before that the bank should be closed, had been implemented by the Federal authorities, did you come to some conclusion about what the actual loss would have been?

Mr. ERICSON. No, we did not.

Mr. BEN-VENISTE. Can you say in rough terms whether or not it would have been a very substantial reduction of the loss that was at the end incurred?

Mr. ERICSON. It is very difficult to say. The argument is sometimes made in savings and loan cases that if an institution had been closed down sooner, the losses would have been less, but it is difficult to prove that and it is very difficult to quantify it.

Mr. BEN-VENISTE. Fair enough. However, with respect to Ms. Bassett Schaffer's recommendation, it was established that she had, in fact, made that recommendation to Federal authorities 2 years before the bank was closed down and was told essentially, hey, take a number, we have a lot of really big institutions that are in trouble and we can't start closing down small institutions and starting a panic in the country. Is that fair to say?

Mr. ERICSON. That's fair to say. I did interview a Federal official on that subject, yes.

Mr. BEN-VENISTE. And you corroborated Ms. Bassett Schaffer's account of that?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. In terms of interviewing the witnesses on this chart, and we will get into the conclusions I guess shortly, maybe in the next round. But since this has been raised, first of all, let me ask you from a general standpoint, were there any witnesses that the RTC told you that you could not interview? Was anybody off limits?

Mr. ERICSON. No, never.

Mr. BEN-VENISTE. Mr. Patterson, did somebody tell you, do not touch so and so, don't interview so and so?

Mr. PATTERSON. No, they did not.

Mr. BEN-VENISTE. If someone had told you that, would that be the type of thing, from a professional standpoint, that you would have readily acceded to?

Mr. PATTERSON. Not at all. In fact, it would probably cause us more interest.

Mr. BEN-VENISTE. With respect to the individuals on this list, obviously anyone could make a long list of people, but I see the President of Madison Bank on this list, Mr. Bunch. What Mr. Bunch had to do with the price of beans as far as your investigation is concerned is illusive. Do you know what Mr. Bunch might possibly have to shed in terms of light on the areas of your inquiry?

Mr. PATTERSON. I'm sorry, I'm missing Mr. Bunch on the list.

Mr. BEN-VENISTE. You have Pockrus and Burge, OK.

Mr. PATTERSON. OK, yes.

Mr. BEN-VENISTE. I misread that.

Mr. ERICSON, let me ask you with respect to the transactions that involved Mr. McDougal, in looking at them in the total context of all of the transactions, did you come to a conclusion with respect to how Mr. McDougal operated and who he involved in the various transactions back and forth between different institutions?

Mr. ERICSON. Yes, we discussed that at some length in the reports. We did.

Mr. BEN-VENISTE. What did you conclude?

Mr. ERICSON. Mr. McDougal operated in a fashion that is, for a banker, I think it is fair to say, highly unusual. It was a rather slap-dash fashion. He worked with a group of old friends and some others, but there are aspects of the way he operated that frankly are almost farcical. He would do things on a very impulsive basis. He would buy things on an impulsive basis and pay for them in odd ways.

Mr. BEN-VENISTE. Was there any evidence that Mr. and Mrs. Clinton were included in this group of friends which Mr. McDougal used to perform these unusual transactions?

Mr. ERICSON. No, I wouldn't say so.

Mr. BEN-VENISTE. Mr. Chairman.

The CHAIRMAN. Mr. Patterson, let me ask you something. This report didn't give the Pillsbury seal of approval with respect to vindicating people in terms of their actions, did it?

Mr. PATTERSON. It was neither to castigate or vindicate anyone, Senator.

The CHAIRMAN. It didn't vindicate anyone, didn't castigate anyone. It's directed to ascertain whether there was any cost-effective relief in seeking to recover moneys that were lost. Is that correct?

Mr. PATTERSON. That was the purpose of the report and of the investigation.

The CHAIRMAN. Is that correct, Mr. Ericson?

Mr. ERICSON. Yes.

The CHAIRMAN. I want to read you a statement by Mr. Fabiani given out just today. It says: "Republican hypocrisy has reached new lows. The Pillsbury Reports—the result of 2 years and \$4 million worth of work for Federal regulators at the RTC—vindicated the President and Mrs. Clinton. . . ." Is that correct?

Mr. PATTERSON. I can again say, Senator, the purpose of the report was not to vindicate or castigate anyone.

The CHAIRMAN. So that statement by Mr. Fabiani is incorrect. Is that true?

Mr. PATTERSON. I agree that the Pillsbury Reports speak for themselves.

The CHAIRMAN. Is this a true statement?

Mr. PATTERSON. It may be his opinion.

The CHAIRMAN. But it's not your opinion?

Mr. PATTERSON. It's not my opinion or the purpose of why we did the reports, Senator.

The CHAIRMAN. Let me ask you this. Did Mr. Stephens head this so-called inquiry, your report, did he head it?

Mr. PATTERSON. He was a part of it but he did not head it.

The CHAIRMAN. He did not head it. As a matter of fact, his involvement was rather limited?

Mr. PATTERSON. It was limited, yes.

The CHAIRMAN. There's really no involvement starting in 1995?

Mr. PATTERSON. That's correct, Senator.

The CHAIRMAN. No involvement. Let me read to you from the Chicago Sun Times. As a matter of fact, if we have that, I would like to give you a copy of the Chicago Sun Times?

Mr. PATTERSON. Yes.

The CHAIRMAN. Dated January 21st?

Mr. PATTERSON. The Late Sports Final Edition?

The CHAIRMAN. Yes.

Mr. PATTERSON. I have it.

The CHAIRMAN. Headline: Facts Fight Fiction Over Whitewater.

Mr. PATTERSON. Yes.

The CHAIRMAN. What's the byline?

Mr. PATTERSON. Hillary Clinton.

The CHAIRMAN. Let me take you down to the last sentence on the first page. "Since most Americans," would you read that?

Mr. PATTERSON. Would you like me to read it, Senator?

The CHAIRMAN. Yes, please.

Mr. PATTERSON. "Since most Americans never heard about this report, let me fill you in."

The CHAIRMAN. And this is referring to the Pillsbury Madison & Sutro Report. Go ahead.

Mr. PATTERSON. It reads: "It was conducted for the RTC by one of the Nation's leading law firms, Pillsbury Madison & Sutro. It took more than 2 years to complete and cost nearly \$4 million. A prominent Republican and former U.S. Attorney Jay Stephens headed the inquiry."

The CHAIRMAN. Mr. Stephens, did you head this inquiry?

Mr. STEPHENS. No, I did not.

The CHAIRMAN. Mr. Patterson, did he head the inquiry?

Mr. PATTERSON. No, he did not, Senator.

The CHAIRMAN. Mr. Ericson, did he head the inquiry?

Mr. ERICSON. No.

The CHAIRMAN. I have to tell you that when you have the White House spin doctors and the Special Counsel to the Committee saying what Mr. Fabiani just gave out today, he is Special Counsel to the White House.

Senator SARBANES. You said to the Committee.

The CHAIRMAN. Excuse me, to the White House. "Republicans are trying to obscure the plain language of the reports in the fog of Senator D'Amato's endless hearings."

The fact of the matter is that we are attempting to ascertain exactly what was the scope of the report; and that, indeed, it was very limited, it did not make conclusions as to wrongdoing or correctness of actions or decisions that were made, but really came down to whether or not it was cost effective, you could bring a suit even against somebody who's committed and reports indicate committed all kinds of violations. And I'm talking about Mr. McDougal.

Senator Hatch, do you have any questions?

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. No, I am just very interested because I know Jay Stephens and I know what a competent lawyer he is, and I know the reputation of Pillsbury Madison & Sutro, a very, very important firm in this country. I have a lot of respect for all of you. I just think this thing has been tremendously mischaracterized through the years.

But I am interested in this statement by Mark D. Fabiani, the Special Associate Counsel to the President, dated today. It says: "Republican hypocrisy has reached new lows. The Pillsbury Reports—the result of 2 years and \$4 million worth of work for Federal regulators at the RTC—vindicated the President and Mrs. Clinton. . . ." Is that true?

Mr. PATTERSON. As I've said, Senator—

Senator HATCH. Is vindicated a good word here?

Mr. PATTERSON. That may be Mr. Fabiani's opinion.

Senator HATCH. It's not your word?

Mr. PATTERSON. Senator, I don't think our dog is in this fight. [Laughter.]

Senator HATCH. Well, it's been brought into it by the media and a whole raft of other people as a vindication of the President and Mrs. Clinton. Frankly, I hope they are vindicated in the end, but I don't think your report necessarily vindicates them. Do you agree with that statement?

Mr. PATTERSON. Senator, it was not our purpose to do either, to incriminate or exculpate or vindicate or castigate.

Senator HATCH. It says, "The Republicans did not like this conclusion, so first they tried to cover up the Pillsbury Reports." In all honesty, this doesn't look like we are covering it up by asking you folks to appear here today. Is there anything to cover up there?

Mr. PATTERSON. I don't believe so, Senator.

Senator HATCH. I don't either. I think the reports have been pretty badly mischaracterized. I also think that Mr. Stephens has not been treated fairly through the process. I have no doubt in my mind he would do honorably and well and honestly whatever your firm's commitment to a reasonable and fine and perfect investigation was made. I have no doubt about that.

But this type of statement from a Special Associate Counsel to the President kind of bothers me. It says: "Now that the Reports have finally been made public, Republicans are trying to obscure the plain language of the Reports in the fog of Senator D'Amato's endless hearings." I think your being here today to review makes it very clear that nobody's trying to obscure anything. We just want to know the facts.

I personally appreciate you being here. I know it is inconvenient and I know it has been difficult, and I have personally resented Jay Stephens being mischaracterized as the media and the White House and others have done. I have heard them say, "Well, Jay Stephens' vindicated the President, your own Republican." As if an attorney is going to slant his legal work because of his own political convictions. That hasn't been my experience in the law. Has it been yours, Mr. Patterson?

Mr. PATTERSON. No, Senator.

Mr. STEPHENS. Senator, I appreciate those comments.

Senator HATCH. Well, they are true. I have a lot of respect for you, and I have a lot of respect for your firm. I have worked with it through the years. We have been opposed in some matters from time to time, and we have worked together from time to time, and I have found your firm to be honest, trustworthy, and a very good firm. I think that's why the firm has lasted for so long.

I think to the extent that this clarifies some matters and some of them may be in favor of the President and First Lady, fine. But to the extent that it clarifies the matters and some of these matters are not in favor of the President and the First Lady, that's fine too.

And I just want to personally express my appreciation to you and my high regard for the firm and for Mr. Stephens as well.

Mr. PATTERSON. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

Mr. Giuffra.

Mr. GIUFFRA. Mr. Ericson, you were the principal draftsman of the Whitewater and the Rose Law Firm Reports, right?

Mr. ERICSON. That is true.

Mr. GIUFFRA. Do you recall your deposition testimony? Let me just read it. This is on page 89:

Question: Did you make a judgment in your reports that the Clintons were not guilty of anything?

Answer: No, I don't think so. That's certainly not the way we phrased it. I think we were at some pains to say in our reports that we weren't exonerating anybody.

Do you remember that testimony?

Mr. ERICSON. Yes, I do.

Mr. GIUFFRA. And that's accurate?

Mr. ERICSON. That's what I said.

Mr. GIUFFRA. Let me turn to page 93 of your testimony:

Question: Am I correct that your reports, in general, did not exonerate the Clintons of all wrongdoing?

Answer: I don't think our reports exonerated anybody of anything.

Do you recall that testimony?

Mr. ERICSON. Yes, I do.

Mr. GIUFFRA. Is that correct?

Mr. ERICSON. Yes, it is.

Mr. GIUFFRA. Now, Mr. Stephens, during this period of February and March of 1994, you had some dealings with Ellen Kulka; right?

Mr. STEPHENS. Correct.

Mr. GIUFFRA. Who was Ellen Kulka during this period?

Mr. STEPHENS. Ms. Kulka was General Counsel for the Resolution Trust Corporation.

Mr. GIUFFRA. You attended meetings with Ms. Kulka; right?

Mr. STEPHENS. I attended, I believe, two meetings or, depending how you characterize them, three meetings on two separate days.

Mr. GIUFFRA. Mr. Patterson, did you have the impression that there was a personality conflict between Mr. Stephens and Ellen Kulka?

Mr. PATTERSON. Yes, I did.

Mr. GIUFFRA. Could you tell the Committee what was the basis for that impression?

Mr. PATTERSON. It was simply based on a meeting that Jay and I had with Ellen Kulka in her office. It just seemed to me, or my impression was that there was a personality conflict. I am not cer-

tain whether it was on Jay's part, but with respect to Ms. Kulka and Jay.

Mr. GIUFFRA. Mr. Ericson, Mr. Patterson told you at the time that Ms. Kulka, the General Counsel of the RTC, disliked something that Mr. Stephens had said at a meeting?

Mr. ERICSON. I think I said I had gained some vague impression to that effect from Mr. Patterson.

Mr. GIUFFRA. There was some sort of a problem between Ms. Kulka and Mr. Stephens.

Mr. ERICSON. There had been some sort of disagreement. I don't know what it was about. I wasn't there.

Mr. GIUFFRA. Now let me read some testimony. This would be August 1, 1994. This is the hearing testimony of Jean Hanson, the General Counsel at the Department of the Treasury, page 161:

Senator HATCH. In fact, Joseph Steiner, the Chief of Staff to Treasury Secretary Bentsen, had told you that he thought Ellen Kulka should be fired for hiring Mr. Stephens, hadn't he?

Ms. HANSON: Yes, he did.

So at the time, Josh Steiner, the same person who had a conversation with George Stephanopoulos, the Senior White House Aide, told Ms. Hanson, the General Counsel of the Treasury Department—and at that time Roger Altman was the Acting Officer at the RTC—that Ms. Kulka should be fired for hiring Stephens.

Now there were some questions that were raised during the very opening round by the Minority. Mr. Patterson, you have no doubt that Mr. Stephens was qualified to act as lead trial counsel in this matter; right?

Mr. PATTERSON. Yes.

Mr. GIUFFRA. Mr. Ericson, you would agree with that; right?

Mr. ERICSON. Yes.

Mr. GIUFFRA. Mr. Stephens, with regard to the draft of the report that you read, you were concerned a bit on the Whitewater Report that it focused too much on accounting issues; right?

Mr. STEPHENS. I believe I indicated in the first or second round I had some general comments to Mr. Ericson. I don't know whether that was one of them or not.

Mr. GIUFFRA. You thought that there was a need to conduct more interviews; right?

Mr. STEPHENS. As a general matter my sense was—and I may have been reflecting my background as a criminal prosecutor—it is helpful to have witness interviews in order to flesh out inferences, to give some life to documents, and to determine what the meaning of those documents may be. So I believe that I expressed some suggestion that it may add some perspective and substance to the report if there were witness interviews to support the documentary analysis.

Mr. GIUFFRA. Mr. Ericson, at your second deposition you recalled Mr. Stephens' comments to you about the need to conduct more interviews, don't you?

Mr. ERICSON. I did testify to that in my deposition. I don't think he phrased it in terms of "need," but of "desirability." I would put it that way.

Mr. GIUFFRA. He said he thought you needed to conduct more witness interviews?

Mr. ERICSON. I think what he said was that he thought it might be desirable.

Mr. GIUFFRA. Now after you spoke to Mr. Stephens, did you, in fact, conduct more witness interviews?

Mr. ERICSON. Yes.

Mr. GIUFFRA. Did you conduct interviews of Mr. Hale? He was not available because of the Independent Counsel, right?

Mr. ERICSON. That's right.

Mr. GIUFFRA. You were never able to talk to Mr. McDougal; is that right?

Mr. ERICSON. That's right. He took the Fifth.

Mr. GIUFFRA. You were never able to talk to Mr. Wade; right?

Mr. ERICSON. That's right.

Mr. GIUFFRA. There was a brief interview that was conducted of Mr. Wade, but you were never able to talk to him; right?

Mr. ERICSON. One of my partners—I think Mr. Patterson—interviewed Mr. Wade. I later sought to re-interview Mr. Wade and, as I told you, I for a long time negotiated with Mr. Wade's counsel but ultimately he too said he would take the Fifth and he refused to be interviewed.

Mr. GIUFFRA. You never talked to John Latham; right?

Mr. ERICSON. That's right.

Mr. GIUFFRA. He was the President & CEO of Madison Guaranty Savings & Loan?

Mr. ERICSON. That's right.

Mr. GIUFFRA. You never talked to Governor Tucker; right?

Mr. ERICSON. Well, with respect to both, we tried but were unable to do so.

Mr. GIUFFRA. Seth Ward, who I think you concluded was the straw purchaser on the Castle Grande transaction; right?

Mr. ERICSON. Mr. Patterson interviewed Mr. Ward. Later I attempted to re-interview Mr. Ward but was unable to do so.

Mr. GIUFFRA. OK.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Obviously the report——

The CHAIRMAN. Mr. Ben-Veniste, I understand the witnesses need a break. Do you want to wait for a round?

Mr. ERICSON. How long is a round?

[Laughter.]

The CHAIRMAN. Well, why don't we take a 5-minute break.

Mr. ERICSON. That would be great.

The CHAIRMAN. Five minutes, and then we will come back to Mr. Ben-Veniste.

[Recess.]

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Let's first talk about the question which you have quite properly answered, in my view, about whether this is an exoneration or a vindication, whatever words are descriptors to describe the conclusions that you reached were not used by you in connection with your report, or indeed are not appropriate to the mission that you undertook on behalf of the RTC. Is that correct, Mr. Patterson?

Mr. PATTERSON. That's correct.

Mr. BEN-VENISTE. Exoneration may well be in the eye of the beholder, but you reached certain conclusions based on the evidence which was put forward in your report, and you stand by them?

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. And if the conclusions are that there was no evidence to conclude that anyone did anything improper, much less fraudulent, then someone could interpret that, if they were personally involved in that factual conclusion, as a vindication if there had been an allegation that they did something improper? Is that fair enough?

Mr. PATTERSON. I think we write the reports. We do not control how they are interpreted by other people.

Mr. BEN-VENISTE. The witnesses that were mentioned to you, some of them were ones that the Independent Counsel refused to allow you to interview. Correct?

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. Such as Mr. Hale and Mr. Latham. Others were the subject of the investigation and were ultimately tried, and the jury is quite literally out in connection with that matter; right?

Mr. PATTERSON. That is correct.

Mr. BEN-VENISTE. Now in addition, there were documents that you sought that were in the possession of the Independent Counsel. We have kind of the same situation right now, and the Independent Counsel did not allow you to review all of the documents you wished to review?

Mr. PATTERSON. In certain cases, initially. I believe we got all of the documents that we asked for through the courts in various Rule 6(e) petitions, however.

Mr. BEN-VENISTE. And it was up to the Independent Counsel to determine whether or not he would agree to provide those under a 6(e) Order?

Mr. PATTERSON. That is correct. There were times we had to wait in line until they had finished with the documents before we could have access to them.

Mr. BEN-VENISTE. I understand that process.

Now with respect to the article that the Chairman referred to, which is the report of the Chicago Sun-Times of January 21, 1996, I would like to draw your attention to that article which was entitled "Fact Fights Fiction Over Whitewater" and see whether you will comment on the conclusions that are drawn by Mrs. Clinton in that article. Referring to the report on the second page of the transcript:

It concluded that the President and I were passive investors in a failed land transaction that lost more than \$40,000 on Whitewater, as we have said all along. It also concluded that we had little knowledge and no control over the Whitewater project.

Now, Mr. Ericson, is that a fair summary?

Mr. ERICSON. In part. The term "passive investor" is one that was discussed in the Supplemental Report on Whitewater. I think I said there that that was really not the issue, and I thought that was a bit of a red herring. But the rest of what you read I think is a fair statement.

Mr. BEN-VENISTE. By "passive investor"—and we went around a little bit with Mr. Stephens about this—in general layman's terms,

a "passive investor" would be characterized as one who did not involve himself or herself in the actual operation of the investment? Is that fair to say?

Mr. ERICSON. I think that is fair.

Mr. BEN-VENISTE. Using that definition, you would agree with the paragraph I read?

Mr. ERICSON. I think using that definition, I would agree. What I meant to point out here was that at pages 77 and 78 of the Supplemental Report, there is a little discussion of the concept of "passive investor." We note that it has several specific meanings in the law, as opposed to lay meanings and that—

Mr. BEN-VENISTE. Right.

Mr. ERICSON. —those meanings simply have no relevance to this.

Mr. BEN-VENISTE. I agree.

Going back to Mrs. Clinton's article:

Further, it affirmed what we have said from day one: That we had no knowledge of any money flowing from Madison Guaranty Savings & Loan to Whitewater, and that we did not receive any loans or dividends from the savings and loan. Madison Guaranty was acquired by our partner in Whitewater, James B. McDougal, some years after we invested in the project.

Factually speaking, do you take issue with that, Mr. Ericson?

Mr. ERICSON. No. Except to a very trivial extent. As I have already testified, I would not use the word "partner."

Mr. BEN-VENISTE. And going on:

As for matters relating to Madison, the report found no evidence that I had any knowledge of any wrongdoing on the part of the savings and loan while I was at the Rose Law Firm.

Mr. ERICSON. I think that is fair.

Mr. BEN-VENISTE. Going forward:

Billing records located after the report was completed confirm that I did minimal legal work on Madison—an average of about 1 hour a week over 15 months, just as I have said from the beginning.

The conclusion was that the work performed was minimal.

Mr. ERICSON. As I already testified, I stayed away from adjectives and consciously didn't use a word like "minimal."

Mr. BEN-VENISTE. Sixty hours over 15 months.

Mr. ERICSON. The numbers are what they are.

Mr. BEN-VENISTE. And we have discussed what that meant in relative terms today. Finally, Mrs. Clinton pointed out that:

Despite these findings, there was no news conference, no announcement, no effort by Congressional investigators to make them public.

We, in fact, once the reports were made available to us, put them in the record, or attempted to do so. There was some problem with getting that accomplished for a number of days, but eventually they were then made public.

Now let me ask that a chart be put up that reflects the conclusions reached with respect to the retention of the Rose Law Firm. It is in the Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm, February 25, 1996. So this supplemented the earlier report that was issued? Is that correct, Mr. Ericson?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. And under "Retention of the Rose Law Firm," the first point on our chart is the conclusion that:

Mrs. Clinton's recollections and Mr. Massey's recollections differ in some respects but for—

This is in respect to how the client came into the firm.

—present purposes, the differences are not material. . . . It makes little difference who was right. There is no hint of fraud or intentional misconduct in either version, and the mere act of retaining the Rose Law Firm did not harm Madison Guaranty in any respect.

Now is that your conclusion?

Mr. ERICSON. Those are certainly excerpts from our conclusion, yes.

Mr. BEN-VENISTE. Do you stand by them today?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Mr. Patterson.

Mr. PATTERSON. Yes, I do.

Mr. BEN-VENISTE. I says:

There is no suggestion that the money was to be a gratuity [as opposed to payment for work performed], nor is there any suggestion of any improper quid pro quo. Again, there is no proof of fraud, intentional misconduct, or harm to Madison Guaranty Savings & Loan.

Was that your conclusion, Mr. Ericson and Mr. Patterson?

Mr. ERICSON. Yes, that is a part of our conclusions.

Mr. PATTERSON. Yes.

Mr. BEN-VENISTE. Do you stand by those conclusions today?

Mr. ERICSON. Certainly.

Mr. PATTERSON. I do.

Mr. BEN-VENISTE. Continuing:

[I]t is highly unlikely to find there was anything untoward, let alone fraudulent or intentionally wrongful in the circumstance of the Rose Law Firm's retention by Madison Guaranty.

Do you stand by that conclusion?

Mr. ERICSON. I do. I want to note one thing, though. You have excerpted part of a sentence. What I said was: "A trier of fact is highly unlikely to find . . ." and so on.

Mr. BEN-VENISTE. OK. So if you put yourself in the position of the trier of fact, you kind of make that conclusion?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Now going forward:

[T]he alleged economic motivation makes no sense. McDougal suggests the Clintons need \$2,000 a month, and the implication is that the account is for the monthly retainer in that amount, but there is no evidence that the Clintons ever received anything like \$2,000 a month from this engagement, and every reason to believe that they never received more than a trivial sum of money.

By which I think you later concluded came to about \$40 a month, given Mrs. Clinton's draw and the way the firm operated; right?

Mr. ERICSON. Yes, but I have to modify one thing. I think that we said it was more on the order of \$20 a month. \$40 would represent her share of gross receipts. \$20 would be a better figure for her share of profits.

Mr. BEN-VENISTE. OK, operating on a 50 percent profit margin as you did. That is correct. And at page 25 of your report you made exactly that point, that this would net out to a grand total of \$20 a month over a 15-month period. My math would tell me that is \$300, but I am finished relying on my math.

Let's turn to the conclusions that were reached in the Supplemental Report on the Representation of Madison Guaranty Savings

& Loan by the Rose Law Firm from the February 25, 1996. This Report was issued after the discovery of the billing records at the White House, the time records of the law firm, plus additional billing records.

You had some billing records and the new discovery provided additional billing records and detailed time breakdowns for attorneys from the Rose Law Firm who worked on Madison Guaranty matters. Is that correct?

Mr. ERICSON. Yes. We had very little before the discovery of those records. So the records added considerably to what we had.

Mr. BEN-VENISTE. The conclusion that you reached was, reading from page 42 of that report:

The billing records found at the White House and other newly acquired evidence add considerably to the sum of knowledge with respect to this matter. Taken as a whole, however, the new evidence does not change the conclusions stated in the Rose Report.

This was your report filed before you had the billing records.

Mr. ERICSON. Yes. That's right.

Mr. BEN-VENISTE. It continues:

The new evidence weakens to some extent the conclusion that Ward was a straw man or nominee and that the acquisition therefore was wrongful, although those remain propositions that one could reasonably advocate. The new evidence has very little effect on the analysis of what the Rose Law Firm knew and did before the acquisition of the IDC property closed. The new evidence shows that, after the acquisition closed, lawyers at the Rose Law Firm [and in particular Mrs. Clinton] had more contact with Seth Ward and performed more services for Madison Guaranty than previously was known, but there remains no substantial evidence that these lawyers knew of or intended to aid and abet McDougal's apparent misconduct.

Do you stand by that conclusion?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Do you stand by that, Mr. Patterson?

Mr. PATTERSON. Yes, I do.

Mr. BEN-VENISTE. Now going on in the Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm, reading from pages 163 and 164:

It would simply not be persuasive to argue that, for \$21,000, McDougal corrupted the Rose Law Firm and convinced half a dozen lawyers, most of whom he did not know, to join him in a scheme to violate the law. Odd as he might seem, McDougal did not involve large groups of strangers in his schemes. Indeed, McDougal typically involved a close group of long-time friends and trusted associates in his plans, and nobody else. And typically it was the same people, over and over, friends and vassals who dated back to McDougal's youth.

Now is that your conclusion, Mr. Ericson?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Do you agree with that, Mr. Patterson?

Mr. PATTERSON. I do.

Mr. BEN-VENISTE. And as I think we covered earlier, the Clintons were not in this close group of long-time friends who were used by Mr. McDougal in that respect?

Mr. PATTERSON. Yes.

Mr. ERICSON. That's our conclusion.

Mr. BEN-VENISTE. Going forward:

The conspiracy theory is hopelessly flawed. The Independent Counsel already has alleged a different conspiracy—the conspiracy with Tucker—involving the same property, IDC/Castle Grande. Without prejudging the results of that forthcoming trial, let us grant that the conspiracy alleged in the [McDougal-Tucker] indictment does not violate common sense. The principals were cut in the deals, and relatively large amounts of money changed hands. . . . Whatever one thinks of that, however,

it strains common sense to place a second set of conspirators on the same property—a set that included half a dozen lawyers who had never met McDougal before, a set that was not cut in on the deals, a set whose senior members stood to gain something upon the order of \$20 a month.

Is that your conclusion?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. And are you comfortable with that today?

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Mr. Patterson, do you agree with that?

Mr. PATTERSON. Yes, I do.

Mr. BEN-VENISTE. Mr. Stephens, you don't know anything about the facts?

Mr. STEPHENS. I have no basis to agree or disagree with this, Mr. Ben-Veniste.

Mr. BEN-VENISTE. I see my red light is on.

The CHAIRMAN. Go ahead.

Mr. BEN-VENISTE. Let me come back, if Mr. Giuffra has something that I can deal with. I think we are about finished. Let me ask a summary question in that respect, without going through all the conclusions in all of the reports. Mr. Patterson, is there any reason that has a foundation in facts that has come forward since the issuance of the reports, or in connection with any other evidence that you have seen that makes you feel that the conclusions reached in your reports are not accurate as we sit here today?

Mr. PATTERSON. No, there is not.

Mr. BEN-VENISTE. Mr. Ericson.

Mr. ERICSON. I am not aware of anything.

The CHAIRMAN. You had an opportunity, I think, to look at and examine some of the reports made by the Federal Bank Examiners with respect to a number of the transactions, in particular, the Castle Grande transaction didn't you?

Mr. ERICSON. We did.

Mr. PATTERSON. Yes.

The CHAIRMAN. In particular, there was one in I think 1987 in which they characterized that transaction which cost the bank about \$3 or \$4 million where Mr. Ward was a straw man? Do you agree or disagree with that?

Mr. ERICSON. As I indicated in the report, I think a jury probably would find he was a straw man, yes.

The CHAIRMAN. Who represented him at that time? Was it the Rose Law Firm?

Mr. ERICSON. I'm sorry? At what time?

The CHAIRMAN. During that transaction he was involved with.

Mr. ERICSON. In my opinion the Rose Law Firm represented him in that transaction, yes.

The CHAIRMAN. So if you have a law firm that is aware of an improper transaction that its client is engaged in, is there any liability that might be ensuing to that firm?

Mr. ERICSON. There could be, but we did not find any evidence of such an awareness here.

The CHAIRMAN. Well, if you knew that the client was indeed participating in a sham transaction, would you say I would be mischaracterizing that transaction where Seth Ward was holding the property as a real transaction or as a sham transaction?

Mr. ERICSON. I think, as I said, the jury would conclude that he was acting as a straw, and that is the way I prefer to phrase it.

The CHAIRMAN. If the law firm was aware of that, would there be potential liability?

Mr. ERICSON. As you phrase it, I would agree with you; yes.

The CHAIRMAN. Would that not create and cause concern on the part of that law firm as to whether there was potential liability?

Mr. ERICSON. If there was such awareness, it might.

The CHAIRMAN. Sure, and I just wanted to ask so that we are not operating in this vacuum, and that this is not some pie-in-the-sky theory. Sometimes through no fault of the authors of a particular report, there is a characterization, for example, "Jay Stephens headed this." Jay Stephens, your billable hours were about \$38,000. That is what you billed for, approximately. Would you say that, Mr. Patterson?

Mr. BEN-VENISTE. It was more like \$70,000.

The CHAIRMAN. I thought it was \$38,000.

Senator SARBANES. \$68,000.

The CHAIRMAN. So if it was \$68,000, and we are not really sure, but say if there is a question of whether it is \$38,000 or \$68,000, or \$70,000—all right, \$68,000, that would hardly represent a major share of the billable hours, the legal billable hours, would it, Mr. Patterson, on this matter?

Mr. PATTERSON. Not on this matter; no, sir.

The CHAIRMAN. As a matter of fact, that would be about 4 percent of the total billable hours, if you charged \$1.9 million?

Mr. PATTERSON. Well, Mr. Chairman, your math is a lot faster than mine.

The CHAIRMAN. It would be in that area.

Mr. BEN-VENISTE. I am staying out of this.

[Laughter.]

The CHAIRMAN. I just thought that I would touch on this.

Mr. GIUFFRA.

Mr. GIUFFRA. Mr. Ericson, the witnesses that are set forth on our chart there, those are names that you are familiar with; correct?

Mr. ERICSON. Most of them, yes.

Mr. GIUFFRA. They were people you chose not to depose or interview, right?

Mr. ERICSON. Yes.

Mr. GIUFFRA. And to some extent when you made the decision as to whether to depose or interview those people, you discussed it with the RTC; right?

Mr. ERICSON. To some extent. I would also discuss it with Mr. Patterson and others I was working with.

Mr. GIUFFRA. If we could just very briefly go through some of the testimony that the Committee has received from some of these witnesses, and this is testimony that is not reflected in your report.

Now Citizens Bank of Flippin was what, Mr. Ericson?

Mr. ERICSON. It was a bank in Flippin that made the mortgage loan on the Whitewater property.

Mr. GIUFFRA. So that was the initial \$180,000 loan; right?

Mr. ERICSON. Yes.

Mr. GIUFFRA. Mr. Burge testified at our hearing on May 8th, at pages 19 and 20 that neither Governor Clinton nor Mr. McDougal

had told him that the \$20,000 Whitewater downpayment was borrowed from Union National Bank, and therefore that the Clintons and the McDougals were not putting any cash into the deal; that it was a 100 percent finance. Is that something you would have at least made note of in your report, that testimony?

Mr. ERICSON. Well, I am not familiar with this testimony because I have not seen it. I think it occurred after we finished our reports, although I am not sure of that. I think we did address the issue of the lack of equity of the Clintons and the McDougals in this. So that is something that we discussed in the report.

Mr. GIUFFRA. Now here is more testimony that the Banking Committee obtained. We asked Mr. Burge whether it was the policy of his bank and a sound banking practice to make a 100 percent loan. And Mr. Burge said, no. Would you have made reference to that in your report?

Mr. ERICSON. I might have.

Mr. GIUFFRA. Let's just look at Mr. Ritter. Mr. Ritter was also at Citizens Bank of Flippin, and there was a question as to the extent of the Clintons' knowledge or control with regard to what was going on at Whitewater. In his testimony before the Committee, Mr. Ritter—and we can get you the actual testimony, but I will paraphrase it from pages 34 and 35, he testified that he had two meetings between 1979 and 1982 with Mrs. Clinton and Susan McDougal where Mrs. Clinton asked several questions about the Whitewater loan and interest rates. Mr. Ritter testified that he believed that Mrs. Clinton was knowledgeable about the Whitewater investment. Now that is something you would have wanted to include in your report, that testimony?

Mr. ERICSON. I would have probably noted that in the report, but I would not have regarded it as very material.

Mr. GIUFFRA. Mr. Paul Berry. Did you consider deposing him? Do you know who he was?

Mr. ERICSON. That is not a name I recall.

Mr. GIUFFRA. He testified that Governor Clinton personally approached him at the Union National Bank, which was the bank that provided the \$20,000 downpayment loan, about making this loan on the Whitewater property; and that Mr. Denton stated that he had been instructed to make that loan.

Senator SARBANES. Where are you referring to now?

Mr. GIUFFRA. Focusing on pages 65 and 66 of Mr. Denton's hearing testimony, and on page 35 of Mr. Berry's deposition.

The CHAIRMAN. Why don't you tell Mr. Ericson and Mr. Patterson who Mr. Berry and Mr. Denton were, so they will have a frame of reference, at least.

Mr. GIUFFRA. Well, Mr. Berry was a lobbyist for Union National Bank, and Mr. Denton was Senior Vice President & Chief Lending Officer of that bank.

The CHAIRMAN. So they were officers, or they were working for the Union National Bank. Is that correct?

Mr. GIUFFRA. Yes.

Mr. ERICSON. Mr. Denton we are quite familiar with, and I believe Mr. Patterson talked to Mr. Denton on numerous occasions.

Mr. GIUFFRA. But you were not able to obtain the testimony from Mr. Denton that he had been instructed by other persons at the

bank to make the unsecured loan to Governor Clinton and also to Jim McDougal, and that—

The CHAIRMAN. Let me interrupt. Mr. Patterson, were you aware of that?

Mr. PATTERSON. With respect to Mr. Denton?

The CHAIRMAN. Yes.

Mr. PATTERSON. I believe I was aware that Mr. Denton had been involved in the loan; yes.

The CHAIRMAN. Were you aware of what Mr. Giuffra just indicated that Mr. Denton testified to here? Tell him what Mr. Denton testified to?

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes.

Senator SARBANES. I think what we should do is give the witnesses the testimony to which Mr. Giuffra is making reference.

The CHAIRMAN. Certainly. Can we send that down to them?

Senator SARBANES. Because, for example, on Mr. Berry the question was:

Question: Just to close the loop on the \$20,000 loan, so it is your memory that it was Bill Clinton as opposed to Mr. McDougal who talked to you about the loan, about having the bank make that loan?"

Answer: He was the one that—he discussed that he was contemplating, he and Mrs. Clinton were contemplating buying a piece of property on the White River, and I said, well, if you need to borrow any money, I am sure we would like to handle it, which was my routine remark to all customers that I had a responsibility for when they expressed a credit need.

Question: At what point—

Answer: I didn't want them to go to some other bank. We would lose their business.

Now that is not the way the question was put to Mr. Ericson in terms of characterizing it.

The CHAIRMAN. Sure.

Senator SARBANES. It was put to Mr. Ericson in terms of the Clintons seeking the loan from Mr. Berry; whereas, Mr. Berry is very clear that he sort of proffered the loan when he heard they might engage in some real estate transaction.

So I think there may be a nuance, but it is an important nuance, a very important one, and I think if Mr. Giuffra is going to refer to testimony just taken recently—I mean, this was May 10, 1996, at his deposition. Of course, you had concluded your report, when, in February?

Mr. ERICSON. The last report was February 1996.

Senator SARBANES. But I think we should put the testimony in front of them.

Mr. GIUFFRA. You did not talk to Mr. Berry, right?

Mr. ERICSON. That is true.

The CHAIRMAN. So Mr. Berry's testimony speaks for itself, and we do not—

Mr. GIUFFRA. We do not have to debate this.

The CHAIRMAN. I think that the Senator was right in making that observation.

Mr. ERICSON. If it saves time, we can stipulate that we did not talk to any of the people on this list. There is no issue about that.

The CHAIRMAN. Well, the question is, if you had known and had had this information, what, if any, impact would this have had in

your decisionmaking? I guess that is the relevance of asking you these things.

Mr. Giuffra.

Mr. GIUFFRA. Mr. Chairman, if I could just sum this up.

Mr. STEPHENS, you did not write these reports; right?

Mr. STEPHENS. That is correct. I did not write these reports.

Mr. GIUFFRA. You gave some preliminary comments to Mr. Ericson; is that right?

Mr. STEPHENS. I gave some preliminary comments to Mr. Ericson with regard to the preliminary report that I was provided in either late October or early November 1994. That was my last comments on any of these reports.

Mr. GIUFFRA. You did not bill any time in 1985 or 1986 except for a few hours in January?

The CHAIRMAN. 1995.

Mr. GIUFFRA. Yes, 1995 and 1996, with regard to this matter?

Mr. STEPHENS. That is correct. I think I had 3 hours in January 1st, 2nd, or 3rd of 1995, but essentially my work concluded probably in the fall. Mr. Ericson asked me to review this report, or take a look at it and give him some comments, so arguably you could say my work concluded with those comments.

Mr. GIUFFRA. You did not review any of the other reports? For example, the Rose Report that was discussed previously—any of the Rose Reports?

Mr. STEPHENS. That is correct—neither drafts nor finals—that is correct; I was not asked to do that.

Mr. GIUFFRA. On the Supplemental Whitewater Report, you did not review any drafts; you did not review the final; is that right?

Mr. STEPHENS. That's correct.

Mr. GIUFFRA. When you spoke to Mr. Ericson, you gave him some comments, and those included one that you thought that perhaps his initial draft did not sufficiently cover the range of fraud that Mr. McDougal was involved in at Madison Guaranty?

Mr. STEPHENS. I will just stand by my prior testimony as to my comments. I think it sufficiently stated my views.

Mr. GIUFFRA. But you were concerned about the fact—

Senator SARBANES. That was not a statement of your prior comments; correct?

Mr. STEPHENS. That is correct. That was a bit different from my prior comments.

Mr. GIUFFRA. You were concerned about whether the pattern of activity that Mr. McDougal was engaged in was being reflected in the report; right?

Mr. STEPHENS. Not necessarily Mr. McDougal, but Madison Bank and the various real estate transactions that Madison was involved in. My concern was essentially that the Whitewater Report not be viewed in isolation from all the other transactions because it might not provide a complete picture.

Mr. GIUFFRA. And with regard to the Whitewater transaction, you were concerned that the report did not appear to take into account sufficiently what appeared to be a difference in the equity input into Whitewater by the Clintons and the McDougals; right?

Mr. STEPHENS. Yes, in a general way. I think it didn't really focus on whether or not there would be any issue of potential liabil-

ity that would arise from that difference of participation with the same potential benefit between the parties.

Mr. GIUFFRA. You thought that the report, the draft you saw, focused too much on accounting issues and not enough on witness interviews?

Mr. STEPHENS. That was my general sense—I conveyed that it would be helpful and instructive to interview witnesses. I believe witnesses add a lot to a document case, and it is very difficult to draw inferences from documents.

It is easier if you have some witnesses' testimony. There may be reasons why you cannot interview witnesses, in which case obviously then you can't; but if you can, I think it is obviously helpful, and those witnesses should be interviewed.

Mr. GIUFFRA. And at least during the period you worked on this matter, the RTC, the client, was very hands-on; right?

Mr. STEPHENS. With regard to my work, I would think that is a fair characterization.

Mr. GIUFFRA. Mr. Ericson, you would agree that they were a fairly active client; right?

Mr. ERICSON. Yes. In this matter, and in every matter I have ever worked with the RTC on, I would agree.

Mr. GIUFFRA. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. In connection with that "hands-on" nature of the client relationship, if there is any suggestion that means that you were told to reach a specific conclusion, or told not to interview a particular witness, let me give you the opportunity to respond.

Mr. Patterson.

Mr. PATTERSON. We were never told that. Had we been told that, I assure you we would have not had acceded to that.

Mr. BEN-VENISTE. Mr. Ericson.

Mr. ERICSON. I agree with what Mr. Patterson said.

Mr. BEN-VENISTE. Now to Mr. Ritter's testimony, Mr. Berry's testimony, and Mr. Denton's testimony, with respect to the making of the \$20,000 loan to the Clintons and the McDougals that was unsecured which was used for a downpayment on the purchase of the original Whitewater tract back in 1978, the testimony is that unsecured loans were made regularly by these banks. They were quite interested in getting the Clintons to become customers of the banks, and offered and volunteered the opportunity to lend them money. They had a prior lending relationship with Mr. McDougal which was a quite satisfactory one. In the context of all that, does that information add or subtract from the conclusions that you reached?

Mr. ERICSON. No, it really doesn't.

I would like to add one further thing. 1978 is 4 years before McDougal bought Madison Guaranty, so there is no nexus whatsoever between that and any possible injury to Madison Guaranty.

Mr. BEN-VENISTE. Of course. And even if the financing had occurred while Mr. McDougal had a controlling interest in Madison Guaranty, that would not affect a conclusion about whether the Clintons were passive investors or hands-on investors? This was

obtaining the financing for the investment, as compared with managing the investment. Is that correct?

Mr. ERICSON. Again, I have not read this testimony. I have listened to various of you describe the testimony, but if I take as accurate your description of the testimony I would say it would affect none of our conclusions.

Mr. BEN-VENISTE. Indeed, the question of how money was obtained to go into an investment prior to the inception of the business of that investment would not affect whether an individual was hands-on in running the business that was invested in?

Mr. ERICSON. I think that is true.

Mr. BEN-VENISTE. It's pretty elementary stuff.

If we could put up the chart to address this point, again, since it has been brought up about Mr. Ward. First, the conclusion that you reached, Mr. Ericson, about Mr. Ward being a straw man, and, of course, that issue was the subject of a civil trial in Little Rock back in 1987.

Mr. ERICSON. Not really. The transaction was the subject of a civil trial, but the issue in that trial was whether he was entitled to certain commissions. So far as I could tell—and I have read the transcript of the trial, and I have talked to trial counsel for Madison Guaranty—the issue of him being a straw or not being a straw entered that, if at all, only very tangentially.

Mr. BEN-VENISTE. Tangentially. And because the parties themselves did not think it was terribly relevant?

Mr. ERICSON. That's right.

Mr. BEN-VENISTE. Let's look at your conclusions:

[W]hile Mrs. Clinton drafted the May 1, 1986 option, nothing proves she did so knowing it to be wrong, the circumstances of the work point strongly toward innocent explanations, and the theories that tie this option to wrongdoing or to the straw-man arrangements are strained at best.

Now is there anything that has occurred since you came to that conclusion in February of this year that would make you modify or change that conclusion, Mr. Ericson?

Mr. ERICSON. No.

Mr. BEN-VENISTE. Mr. Patterson.

Mr. PATTERSON. No.

Mr. BEN-VENISTE. Further:

[I]t is doubtful that the option caused any harm. It was never exercised. It did not cover up anything, nor did it prevent the FHLBB examiners from roundly criticizing the IDC/Castle Grande Project in their 1986 Report of Examination. While it became an issue in *Ward v. Madison*, neither Ward's counsel nor Madison Guaranty's counsel thinks it was very important to the result, and a review of the trial transcript leads to the same conclusion.

Again, simply carrying forward the point that you had just made that you had talked to the people involved and had come to this conclusion on the basis of accumulating the facts.

Mr. ERICSON. Yes.

Mr. BEN-VENISTE. Of course, you looked at the Bank Examiners Reports in response to an earlier question that suggested that you might not have done so, and it is quite clear from your earlier responses and from the conclusion here stated that you looked at the Bank Examiners Reports. Indeed, I believe, interviewed the Bank Examiners?

Mr. ERICSON. Yes. In fact, that was one of the very first things we did in this investigation back in February 1994, was look at the Bank Examiners Reports and we made constant reference to them throughout the investigation.

Mr. BEN-VENISTE. Now when did it appear clear or apparent that the Clintons had not engaged in any wrongdoing in the course of when you went through this material? Would that have been by the first draft of the Whitewater Report that we have talked about?

Mr. ERICSON. I have a little difficulty with the question as it is phrased. I worked on different parts of this at different times—

Mr. BEN-VENISTE. With respect to Whitewater.

Mr. ERICSON. With respect to Whitewater.

Mr. BEN-VENISTE. Right.

Mr. ERICSON. I certainly was of the view that there was no case to be brought against the Clintons as of the time I prepared the first draft.

Mr. BEN-VENISTE. And that was the draft that Mr. Stephens reviewed?

Mr. ERICSON. Yes. Well, he reviewed several drafts, as I think he has testified, and I certainly will testify, but that was the first one he reviewed.

Mr. BEN-VENISTE. What were the other drafts that Mr. Stephens reviewed?

The CHAIRMAN. Mr. Stephens, were you going to say something?

Mr. STEPHENS. I was just going to add, that does not comport with my memory. I reviewed one draft of the report, if I remember correctly, in early November.

The CHAIRMAN. Mr. Ericson.

Mr. ERICSON. Let me put it this way. I only recall discussing with Mr. Stephens the first draft. I believe I sent him one or two later drafts, and I think his timesheets reflect that he at least briefly may have looked at one or two of the later drafts, but I don't think that he and I ever discussed them.

Mr. BEN-VENISTE. Was there any effort to—

Mr. STEPHENS. May I respond to that? That would probably account for the 3 hours in January of 1995. There may have been a second draft that I spent 3 hours looking at at one point.

Mr. BEN-VENISTE. After looking at that draft, apparently you did not convey any further comments to Mr. Ericson?

Mr. STEPHENS. I do not think I finished reading that draft, if I remember correctly. Three hours probably would not have been sufficient to read it.

Mr. BEN-VENISTE. So you read it, billed for it, and put it down?

Mr. STEPHENS. I didn't read—

Mr. BEN-VENISTE. You didn't finish it.

Mr. STEPHENS. Right. Mr. Ericson didn't ask for any comments.

Mr. BEN-VENISTE. You billed \$600 bucks for partially reading the report; is that right?

Mr. STEPHENS. I read part of the report for 3 hours and did not provide any comments. I was not asked for any comments, and it did not seem that any comments were appropriate in that circumstances.

Mr. BEN-VENISTE. Did anyone prevent you from giving any comments you might have had?

Mr. STEPHENS. It was not my role in the engagement at that point in time to volunteer comments because I did not have a factual predicate upon which to base those comments.

Mr. BEN-VENISTE. Did anyone prevent you from volunteering any comments, Mr. Stephens? Anyone from the RTC? Anyone from the firm of Pillsbury Madison & Sutro, or anyone else on the planet?

Mr. STEPHENS. Well, in fact the RTC asked me to read all the reports when the reports were filed in December. I declined to do that because I had not been involved in the engagement. I thought it was improper and inappropriate for me to review those reports simply so the RTC could have my imprimatur on those reports.

Mr. BEN-VENISTE. Did anyone prevent you from providing any comment on the reports that Mr. Ericson sent you?

Mr. STEPHENS. I was not "prevented" from doing something, Mr. Ben-Veniste, but in the dynamic of how the engagement was structured, it certainly wasn't something that I would reach out and do my own private investigation and then provide comments to Mr. Ericson and Mr. Patterson.

If they had wanted my comments, if they had asked me to review certain materials, if they had wanted me to look at the predicate to review those reports, I probably would have responded to that, as I did earlier, that I will do anything you want me to do to assist. But it really wasn't appropriate for me to reach out and start providing comments based on suppositions that I might read in press accounts or something.

Mr. BEN-VENISTE. Well, you weren't exactly——

Senator SARBANES. Why did you bill the RTC for partially reading a report?

Mr. STEPHENS. I billed them because at that point there was a question of whether I should review this report. It probably was sent to me by Mr. Ericson. At some point it was apparent that nobody was going to ask me for comments, so I just stopped reading the report.

Mr. BEN-VENISTE. So it was your view——

Mr. STEPHENS. Mr. Ericson could have written it off, if he had wanted to.

Mr. BEN-VENISTE. So you were just sort of passive there, that the people had to ask you for comments for you to give any. Did anyone ask you for comments the first time you gave the comments?

Mr. STEPHENS. In November, yes. Mr. Ericson in a casual way, said, would you take a look at this and give me your thoughts, give me any thoughts you have, or ideas you have.

Mr. BEN-VENISTE. And then when you got the second draft, you thought that those instructions were inoperative and that you ought not to give any comments if you had any?

Mr. STEPHENS. It may be that there were no comments asked for in the second draft. I got it, started reading it, and realized that there was no reason for me to read this. Maybe it would have been appropriate for me to write that time off.

Mr. BEN-VENISTE. Did you have any comments?

Mr. STEPHENS. I don't remember what that report said.

Senator SARBANES. I am not sure why you billed for it under the facts your are outlining for us.

Mr. STEPHENS. Pardon?

Senator SARBANES. It is not clear to me why you billed time.

Mr. STEPHENS. I spent 3 hours reading that report.

Senator SARBANES. I understand that, but why did you bill for it on the basis of what you are now telling us?

Mr. STEPHENS. I spent the time on the client matter. I reviewed or read the report for 3 hours, and I think it was appropriate. If the billing partner did not see any value in that, it was his option of course to write that time off.

Mr. BEN-VENISTE. Of course, he would not know that you did not regard, having been sent the draft as an invitation to comment?

Mr. STEPHENS. It was his report. He was the billing partner.

Mr. BEN-VENISTE. Mr. Ericson, what was the purpose of sending that report?

Mr. ERICSON. You know, I don't have any specific recollection. I think I just sent Jay a draft in case he had any comments or suggestions for me, and I probably just put it in an envelope and sent it to him. And, when I didn't hear back, I assumed he had nothing of substance to pass along and didn't think any more of it.

Mr. BEN-VENISTE. That seems pretty straight-ahead. And then if I understand your comments, Mr. Stephens, when a client asks you specifically to review the reports later on, you decline to do so? So then, rather than anyone telling you not to do something, you were invited to comment and you declined to do so because you had not participated—

Mr. STEPHENS. If I remember correctly in December 1995, shortly before the Pillsbury Reports were filed with the RTC, the client called one of my partners and asked that I review these reports. The client apparently was concerned that I might differ with them, or that the client—I don't know all the client's reasoning—wanted my blessing, somehow or other, so that there would be no differences of views about these reports.

We discussed that, Mr. Ericson, Mr. Patterson, and I. I said I thought it was inappropriate. I did not have the factual predicate. It did not seem appropriate for me to go back and get up to speed on the entire factual predicate simply to review the report from the RTC. I felt, frankly, it was inappropriate to ask me to read those reports. As a consequence, I declined.

I think Mr. Patterson discussed that matter with the client and advised the client that the better part of discretion here would be that there was no reason to involve me in reading those reports or to get my imprimatur on those reports.

Mr. BEN-VENISTE. Mr. Patterson, what is your recollection?

Mr. PATTERSON. I think that is substantially correct, Mr. Ben-Veniste. The client had asked—I think it wasn't, did not ask for Jay's imprimatur on the reports, but rather asked if Jay was "all right" with these reports; and could I ask that he review them so they would know what his position was. Jay declined to do so; felt that he did not want to do so. I called the client back and said, that's what the situation was. They said, no problem.

Mr. BEN-VENISTE. Did Mr. Stephens at any time during this time period indicate to you that he took issue with the conclusions that were reached in the draft reports?

Mr. PATTERSON. No, he did not.

Mr. BEN-VENISTE. Mr. Ericson.

Mr. ERICSON. No.

Mr. BEN-VENISTE. Indeed, Mr. Stephens, you did not take issue with the conclusions that were reached because you claim you didn't have the basis?

Mr. STEPHENS. That is correct. I did not have a basis to comment appropriately on these reports.

The CHAIRMAN. Let me ask you. Who was "the client"? Who at the end called and said, how does Jay Stephens feel about this, or whatever he or she said, and you can use your own words?

Mr. PATTERSON. Mark Gabrellian would have called me and asked if Jay was all right with all of these reports, and would have asked me—or it could have been Bruce and I both—whether Jay could review the reports. We talked to Jay. He declined to do so. We advised the client, and that was the end of it.

The CHAIRMAN. Mr. Stephens, you felt that this would be putting your imprimatur on this without having had the opportunity to really be involved in the product itself?

Mr. STEPHENS. I think we all agreed that the individuals who had written the reports, who had done the vast majority of the investigation, they should review those reports; that it would be somewhat, simply a perceptual exercise for me to review those reports; and that it really was not a fair use of the time and that it really was not appropriate to proceed that way.

Mr. BEN-VENISTE. Did anyone withhold from you, Mr. Stephens, the reports of interviews, depositions, or other materials associated with—had you made any request to review materials that was turned down?

Mr. STEPHENS. No, Mr. Ben-Veniste, but in the context of doing a matter, it would be rather unusual, frankly, for the partner down the hall from me to make that same request: Can I see the depositions, and the interview notes.

While I was assigned to the matter, frankly I wasn't doing any work on it of any substance certainly after November 1994, and it would have seemed rather strange for me to reach out and say, give me all those interview notes, I want to do my own little investigation. I think that would have been inappropriate in the context of the dynamic of the way it was staffed. Mr. Ericson and Mr. Patterson are both very talented and very experienced, and they had conducted the investigation. It seemed rather inappropriate for me to reach out and try to do my own investigation.

Mr. BEN-VENISTE. The bottom line is that you did not make any request, and, therefore, nobody turned you down.

Mr. STEPHENS. I think you are trying to characterize it unfairly. I stand by my comments.

Mr. BEN-VENISTE. So, if I were going to characterize this from a standpoint of you distancing yourself, I certainly could think of things much more extensive than have been brought forward here, Mr. Stephens.

Thank you.

The CHAIRMAN. We could go on and on and on. I have to tell you, though, this last matter I think takes on a certain light in terms of how some, indeed, without Mr. Stephens having signed off, so to speak, on this report, have used the fact and have even characterized this report as one being headed by Mr. Stephens.

It would appear that there was an attempt to get his stamp of approval as it related to the work product that eventually became the report. As a matter of fact, to read the report, not even the work product, I think Mr. Stephens has given his testimony as to what he felt would have been necessary, and that would not have been appropriate. Indeed, you, Mr. Patterson, Mr. Ericson, and Mr. Stephens, discussed it. Was that right?

Mr. PATTERSON. That's correct.

The CHAIRMAN. See, I don't know whether or not the RTC was attempting to get a situation where there could be no correction, if Mr. Stephens read this; just, you know, after all then he agrees. He agrees with what happened, how it was done, how it was conducted, in the "Stephens Report."

Look, we could go back and forth on this. I believe that all of you have been straightforward and candid. Mr. Patterson, Mr. Ericson, and Mr. Stephens, we thank you for coming in and attempting to explain what you attempted to do in this report, what the report did, what its conclusions were, and how you arrived at them.

Anything as extensive and as controversial as these matters, and where subjective views from people enter in, you are always going to have people who are going to second guess. That is not our role here. Our role was to determine what you did do, and the interpretations and the spins that various people place on these reports that certainly don't reflect, necessarily, what your conclusions were or what you meant by them. So I think that is a fair statement.

Let me comment at this time with respect to two witnesses. Mr. Hale, the potential of examining him, we are sending a letter out to his lawyer suggesting a time of, I believe, next Friday in order to depose him; and the following Wednesday, June 4th because of the recess, for possible public testimony.

In addition, we have been informed by Mr. Watkins' lawyer that he is still under a doctor's care and I will let Counsels speak to that, about what if anything we will do about that.

Again, I want to thank the witnesses for appearing, and I want to thank them for their candor.

We stand in recess.

Mr. ERICSON. Thank you, Mr. Chairman.

Mr. PATTERSON. Thank you, Mr. Chairman.

Mr. STEPHENS. Thank you, Mr. Chairman.

[Whereupon, at 12:47 p.m., on May 17, 1996, the hearing in the above-entitled matter was recessed, to reconvene subject to the Call of the Chair.]

[Appendix supplied for the record follows:]

3247

LAW OFFICES OF
PILLSBURY MADISON & SUTRO

SAN FRANCISCO
LOS ANGELES
TORO

WRITER'S DIRECT DIAL NUMBER

SUITE 1100

1887 H STREET, N.W.

WASHINGTON, D. C. 20006

TELEPHONE (202) 887-0300

TELECOMEX (202) 288-7608

ORANGE COUNTY
SACRAMENTO
SAN DIEGO
SAN JOSE
MENLO PARK

225 Bush Street
Telephone: (415) 983-1560
Telecopier: (415) 477-4801

February 16, 1994

Mark Gabrellian, Esq.
Senior Counsel
Resolution Trust Corporation
Professional Liability Section
1717 H Street, N.W.
Washington, D.C. 20474-0006

Re: Resolution Trust Corporation - Investigation of
Madison Guaranty S&LA, Little Rock, Arkansas -
Case Plan and Budget

Dear Mark:

As requested, I enclose a case plan and budget for this matter. Needless to say, many things remain uncertain (such as the documents that may or may not become available in Little Rock), but we have done the best we can to plan a realistic and cost-effective investigation.

Very truly yours,

Bruce A. Ericson

Bruce A. Ericson

Enc.

cc: Mr. Charles E. Patterson w/enc.
Mr. Jay B. Stephens w/enc.

11590423

S-TH00436

TABLE OF CONTENTS

	<u>Page</u>
I. CASE PLAN	1
A. Overview	1
B. Real estate deals	1
1. Castle Grande and Castle Water & Power	2
2. Campobello, Maplecreek	2
3. 1308 Main, 13th & Main, Goldmine Springs, Eden Park, Brittany Point and Fair Oaks	3
C. Check kiting	3
D. Overall patterns and practices	3
1. Appraiser malpractice	3
2. Title company wrongdoing	4
3. Attorney misconduct	4
4. Self-dealing and fraudulent conduct	4
E. Liaison with other investigations	5
F. Depositions and financial condition discovery	5
G. Legal research	5
H. Drafting of recommendation and related papers	6
II. TIME LINE	6
III. BUDGET	6

I. CASE PLAN.A. Overview.

We think the investigation should break down into three discrete subject matter areas: real estate deals; check kiting; and overall pattern and practice of misconduct.

The real estate deals include Castle Grande, Castle Water & Sewer Company, Campobello, Maplecreek Farms, Goldmine Springs, 1308 Main and 13th and Main (and possibly others, such as Eden Park, Brittany Point and Fair Oaks). Issues include self-dealing, fraudulent conveyances at inflated values (land flips), and improper and excessive payments to affiliates and cronies. To the extent they may rise to the level of intentional misconduct, issues also include regulatory violations, violations of the 1984 Supervisory Agreement and the 1986 Cease and Desist Order, and other unsafe and unsound practices that appear (a) to be intentional and (b) to have resulted in substantial losses to the institution or personal gain.

We know relatively little about the check kite, apart from the information set forth in the criminal referral. It appears to involve approximately 12 entities. Here too a major question is whether the kite, even if proved, resulted in substantial losses to the institution or personal gain.

Finally, the issue of overall patterns and practices arises for several reasons: First, regardless of the types of claims that may be asserted, we need to demonstrate that any wrongful conduct that occurred was intentional misconduct, and not an isolated incident or inadvertent error. Second, some of the alleged wrongful conduct is not specific to any one deal. Third, we may wish to consider asserting civil RICO claims and, if so, we will need to establish a "pattern of racketeering activity" within the meaning of 18 U.S.C. §§ 1961(1), (5).

B. Real estate deals.

These, by their very nature, are document-intensive. They also are the subject of previous investigations (e.g., Gerrish) and previous litigation (e.g., the McDougal criminal case and the Dixie Continent, Files, Frost & Company, Hale, Bill Henley, Tucker, Ward and Whitener civil cases). To avoid re-inventing the wheel, we need to start by reviewing, understanding and

1. The applicable statutes of limitations probably limit us to such claims. The statutes applicable to negligence and gross negligence apparently have expired. See 12 U.S.C. § 1441a(b)(14), as modified by the Resolution Trust Corporation Completion Act of 1993, Pub. L. No. 103-204, 107 Stat. 2369, and by section 4 of the emergency earthquake relief act signed February 12, 1994.

thoroughly analyzing the very extensive documentary record of these matters, both for what assistance it offers us (e.g., collections of key documents, interview notes) and for what problems it presents (e.g., possible preclusive effect of previous settlement agreements and releases).

We propose to assign a team, typically consisting of a real estate transactional lawyer and a litigator, to each of these matters, as follows:

1. Castle Grande and Castle Water & Power.

Document volume and location:

D.C.: Ward litigation (three boxes); portions of Gerrish and Ingersoll & Bloch reports (10 boxes and growing); portions of the OTS files (eight boxes).

K.C.: Approximately 64 files, of which 27 appear to be the most pertinent.

Little Rock: Unknown.

Potential witnesses or defendants: Lisa Aunspaugh; George Betts; Steve Cuffman; William Darby; Don Denton; Paul Eckert; Davis Fitzhugh; J. William Fulbright; David Hale; Dwight Harlan; David Henley; James Henley; Larry Kuca; John Latham; James McDougal; Susan McDougal; Mitchell law firm; Robert Palmer; Dean Paul; Charles Peacock III; R. D. Randolph; Jim Guy Tucker; Seth Ward; Freddie Whitener; and Bob Wilson.

Special issues: Legislative and regulatory issues re Castle Sewer and Water Company; backdating of documents; tax fraud (Ward); effect of settlements and releases.

PM&S team: John Garrett; Louis Raymond; Michael Finnegan.

2. Campobello, Maplecreek.

Document volume and location:

D.C.: Portions of Gerrish and Ingersoll & Bloch reports (10 boxes and growing); portions of the OTS files (eight boxes).

K.C.: Approximately 214 files, of which 89 appear to be the most pertinent.

Little Rock: Unknown.

Potential witnesses or defendants: Lisa Aunspaugh; George Betts; Eugene Pat Harris; David Henley; James Henley; Larry Kuca; James McDougal; Susan McDougal; Robert Palmer; Charles

Peacock III; R. D. Randolph; Sasaki Associates; Chris Wade; and Bob Wilson.

Special issues: Heightened difficulty of proving intentional misconduct with respect to these early (pre-Supervisory Agreement) deals; violation of Interstate Land Sales Act (Campobello); file-stuffing (Maplecreek).

PM&S team: Chris Curtis; Vicki Randall; Kent Goss.

3. 1308 Main, 13th & Main, Goldmine Springs, Eden Park, Brittany Point and Fair Oaks.

Document volume and location:

D.C.: None, other than a few memoranda, such as three criminal referrals and the exhibits thereto.

K.C.: Approximately 62 files, of which 23 appear to be the most pertinent.

Little Rock: Unknown.

Potential witnesses or defendants: Lisa Aunspaugh; Eugene Pat Harris; Bill Henley; James McDougal; Susan McDougal; Jim Guy Tucker; Freddie Whitener; and Greg Young.

PM&S team: John Garrett; Faith Kelly.

- C. Check kiting.

Document volume and location:

D.C.: None, other than several criminal referral and the exhibits thereto.

K.C.: Unknown.

Little Rock: Unknown, but we understand that most documents relevant to this topic should be in Little Rock, perhaps in the hands of the special prosecutor.

Potential witnesses or defendants: Bill Clinton; Hillary Clinton; J. William Fulbright; James McDougal; Susan McDougal; Stephen A. Smith; Jim Guy Tucker.

PM&S team: Kathleen Collins; Ethan Feffer; Marvin Bartel.

- D. Overall patterns and practices.

1. Appraiser malpractice.

The appraisal work performed by George Betts and Robert Palmer appears to be seriously deficient and possibly the result

of intentional misconduct. Possible hurdles here may include statutes of limitations and, at least in the case of George Betts, an inability to pay any judgment (Betts went through a chapter 7 bankruptcy). Still, the appraisers could prove to be useful witnesses.

2. Title company wrongdoing.

Madison Guaranty set up its own captive title company, Quapaw Title, using two employees lured from Mid-South Title (Clark and Tanner). Quapaw's practices appear to be seriously deficient and possibly the result of intentional misconduct. Quapaw Title no longer exists.

Document volume and location:

K.C.: Unknown (the views expressed above are based largely on a review of specific transactions rather than files maintained by Quapaw itself).

Little Rock: Unknown, except that the Arkansas Insurance Commissioner may have documents on microfilm relating to Quapaw's existence and dissolution.

3. Attorney misconduct.

Both the Mitchell firm and the Rose firm issued "clean" opinions to Madison Guaranty's auditors indicating that counsel were aware of no actual or potential claims against Madison Guaranty. At least in the case of the Mitchell firm, issuance of such an opinion is very difficult to reconcile with facts of which the firm's lawyers must have known, given their involvement in some of the real estate deals mentioned above.

Potential witnesses or defendants: Hillary Clinton; Jim Guy Tucker.

4. Self-dealing and fraudulent conduct.

A pattern of self-dealing and apparent insider abuses seems to run through these transactions. We should investigate the idea that Madison Guaranty was run essentially to facilitate such misconduct. We are struck, for example, by Madison Financial's articles of incorporation, which appear to contemplate and indeed bless self-dealing.

Document volume and location:

D.C.: OTS records (eight boxes) and other supervisory documents.

K.C.: Articles of incorporation, by-laws, board minutes and records, and other general corporate documents. As noted, we have uncovered some oddities in the articles

of incorporation of Madison Financial. These suggest that self-dealing was contemplated from the outset.

Little Rock: We suggest subpoenaing Deloitte & Touche, as Madison fired Deloitte in 1984. Some review of corporate financial records may be needed. We also suggest review of files pertaining to key witnesses (e.g., Tucker, Ward). Many of the key players borrowed money for personal reasons from Madison Guaranty.

Potential witnesses or defendants: In addition to those listed above, Karen Bruton, Paul Castleberry, Steve Cuffman and Pat Heritage, and auditors from Deloitte & Touche.

Special issues:

Effect of bankruptcy discharges: Betts; McDougal; Latham.

Effect of settlements and releases in prior civil cases: Dixie Continent. Files, Frost & Company, Hale, Bill Warley, ~~Harold~~, ~~Ward~~, ~~Ward~~ and ~~Whitener~~ civil cases.

PM&S team: Jay Stephens; Ed Kolto; our real estate team.

E. Liaison with other investigations.

We need to avoid friction with other investigations (e.g., the special prosecutor) and, where possible, effect economies by cooperating.

PM&S team: Charles Patterson; Jay Stephens.

F. Depositions and financial condition discovery.

To the extent desired by the RTC, once targets are identified, we need to subpoena their personal financial statements and depose them on these and merits-related subjects.

PM&S team: Charles Patterson; Jay Stephens; Bruce Ericson.

G. Legal research.

A number of issues have appeared already, and more will emerge as we progress. The issues that already have appeared include:

1. Effect of discharges in bankruptcy.
2. Effect of settlements and releases in prior civil litigation.
3. Construction of statute of limitations extender legislation.

4. Statutes of limitations and tolling doctrines applicable under Arkansas law (counting backwards from February 28, 1989), including fraudulent concealment and adverse domination.

5. Elements of causes of action under Arkansas law sounding in fraud and "intentional misconduct," and related theories of liability such as civil conspiracy and aider and abetter.

6. Control of documents and access to evidence (e.g., Fed. R. Crim. P. 6(e)).

PM&S team: Bruce Ericson; J. Daniel Davis; Marta Beckwith.

H. Drafting of recommendation and related papers.

PM&S team: Bruce Ericson.

III. TIME LOGS.

We anticipate working in accordance with the following rough schedule, bearing in mind that, as always in litigation, many things may be outside our control:

<u>Date</u>	<u>Event</u>
03/15/94	Complete basic document review
03/15/94	Serve subpoenas on third party witnesses
04/30/94	Complete third party interviews
05/31/94	Complete target subpoenas and depositions
06/30/94	Complete recommendation

III. BUDGET.

Our proposed budget is attached. There are, of course, considerable uncertainties here that could affect the cost of this investigation. We have no idea what, or how many, documents we will find in Little Rock. We also have no idea how negotiations with the Special Prosecutor will progress.

On the budget itself, please subtract from the totals the "overhead/contingency" and "overhead/diag." numbers (lines 100 and 101). The software automatically adds in these numbers, but they have no meaning and should be disregarded.

Attach.

<u>Transaction</u>	<u>Chart</u>	<u>Disbursement Out of Madison Guaranty or Affiliate</u>	<u>Deposit Into Whitewater</u>
1	8	\$ 50,545	\$ 7,500
3A	9	12,650	12,000
3B	10	68,574	5,566
6	11	46,000	1,000
8	12, 12A	900,949	24,456
9	13	112,872	7,500
Bonus	14	<u>30,000</u>	<u>30,000</u>
Totals		\$1,221,590	\$88,022

As can be seen, there is not necessarily any relationship between the dollar amount of the disbursement out of Madison Guaranty and the dollar amount of the associated deposit into Whitewater. There are several reasons for this:

First, the movement of funds among McDougal-controlled entities and from them to Whitewater is not unique but only one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled. In these years, the McDougals lacked the money needed to pay their debts, so they moved money between entities as needed to pay obligations to third persons.⁷ A desire to deposit money into Whitewater for Whitewater's ultimate benefit cannot be assumed to be the primary rationale behind a particular transaction; other debts may have loomed much larger.

Second, a disbursement out of Madison Guaranty cannot be assumed to have resulted in a loss or damages to Madison Guaranty. Typically, these disbursements were not loans that went unpaid. Instead, typically they were payments to vendors or employees (including McDougal).⁸ Because these disbursements were not loans, Madison Guaranty had no expectation of repayment. Therefore, these disbursements caused a loss to Madison Guaranty only if the vendors or the employees were not entitled to receive the

7 Preliminary Report at 5.

8 Among the nine transactions and the McDougal bonus, the only disbursement out of Madison Guaranty that took the form of a loan was part of transaction 8. As the table shows, however, the dollar amount of that loan (\$825,000) exceeds the sum of the other disbursements.

DIARY OF JOSHUA L. STEINER

I. 12/2/93 - 1/9/94, lines 1-3: Whitewater (Clinton's real estate investments) and Madison S&L dominate the news. Clear lesson: release everything right away.

II. 1/24-2/12/94, lines 1 forward: Two extremes: In DC spent long hours w/ RA going over how he should handle the RTC's investigation of Whitewater. The statute of limitations on Madison Guaranty cases was supposed to expire 2/28. Should RA recuse himself or should he stay involved. The hurdle was so high (fraud) that it seemed unlikely the RTC would bring suit or seek a tolling agreement from BC/HRC, but the chance existed. RA originally decided to recuse himself but under intense pressure from the White House, he said he would make the final determination based on a recommendation from Ellen Kulka, the GC. The GOP through D'Amato began a countdown to the 28th which was particularly ironic since he had voted against extending the statute during the RTC reauthorization period. As it turns out, RA's problem will probably pass when the Congress decides to extend the statute once again. Pressure on RA will certainly mount next week when Congress holds hearings on the RTC given that Ricki Tiegart the FDIC nominee declared that she would recuse herself from all Madison related issues due to her friendship w/ the Clintons. The WSJ also got into the act w/ a scathing attack on RA and Gene Ludwig.

III. and IV. 2/13-2/27/94, line 7 forward: Every now and again you watch a disaster unfold and seem powerless to stop it. For weeks we have been battling over how RA should handle the RTC investigation of Madison Guaranty S&L. Initially, we all felt that he should recuse himself to prevent even the appearance of a conflict. At a fateful WH mtg w/ Nussbaum, Ickes and Williams, however, the WH staff told RA that it was unacceptable. RA had gone to brief them on the impending statute of limitations deadline and also to tell them of his recusal decision. They reacted very negatively to the recusal and RA backed down the next day and agreed to a defacto recusal where the RTC would handle this case like any other and RA would have no involvement. We are very concerned that at the RTC oversight hearings the GOP would hammer away at the recusal issue so we renewed discussions w/ the WH about what RA would do when his term expired on March 30. Once again they were very concerned about him turning the RTC people they didn't know so RA did not formally commit himself to stepping down (he could stay on if we had formally nominated a successor). At the hearing, the recusal amazingly did not come up. The GOP did hammer away at whether RA had had any mtgs. w/ the WH. He admitted to having had one to brief them on the statute deadline. They also asked if staff had met, but RA gracefully ducked the question and did not refer to phone calls he had had. The next day, the NYT ran a front page story on the mtg. The heat was on. We spent a tortured day trying to decide if he should recuse himself. I spoke w/ Podesta to let him know

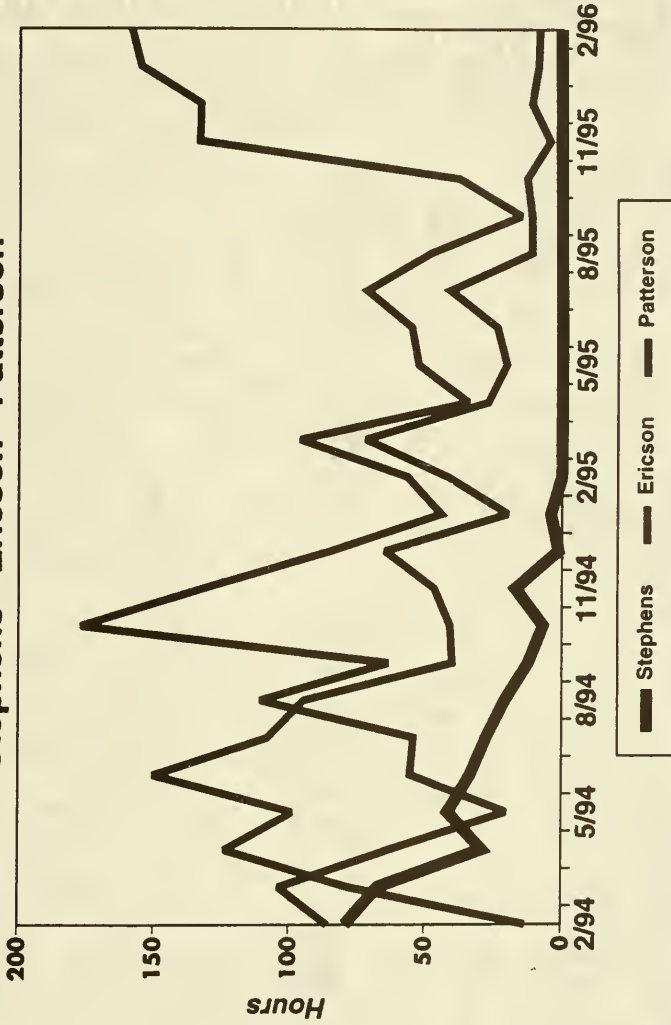
of our deliberations. Very frustrating that he was the chosen point of contact since he clearly was not in the complete confidence of George and Harold. After Howell Rains from the NYT called to say that they were going to write a brutal editorial, RA decided to recuse himself. Harold and George then called to say that BC was furious. They also asked how Jay Stephens, the former USA, had been hired to be outside counsel on this case. Simply outrageous that RTC had hired him, but even more amazing when George then suggested to me that we needed to find a way to get rid of him. Persuaded George that firing him would be incredibly stupid and improper. The NYT ran a very mean editorial which referred to the "bone headed conclave convened by RA." Lessons: Do what you think is the right thing early (recuse); remember that everything might eventually be asked about under oath; don't let the WH get involved in any way.

V. 2/13-27/94: Such an incredible city. Been battling w/ the RTC/Madison. Wrote two pages about what's been going on, suddenly realized that I could be subpoenaed like Packwoods and the most innocuous comments could be taken out of context. So on that subject, nothing.

Pillsbury, Madison & Sutro

Hourly Billings

Stephens - Ericson - Patterson



WITNESSES NOT INTERVIEWED BY PILLSBURY MADISON & SUTRO

• FRANK BURGE	Citizens Bank of Flippin
• JAMES PATTERSON	Citizens Bank of Flippin
• ROBERT RITTER	Citizens Bank of Flippin
• PAUL BERRY	Union National Bank
• RONALD PROCTOR	First Ozark Bank/Twin City Bank
• EDWARD PENICK	First Ozark Bank/Twin City Bank
• WES STRANGE	First Ozark Bank/Twin City Bank
• VERNON DEWEY	First Ozark Bank/Twin City Bank
• THERESA POCKRIS	Madison Bank & Trust
• FRANK OLDFHAM	Security Bank of Paragould
• CHARLES CAMPBELL	Security Bank of Paragould
• WILLIAM FISHER	Security Bank of Paragould
• GAINES NORTON	Clinton accountant
• JOLY REDDON	Clinton accountant
• JAMES LYONS	Clinton consultant
• LES PATTEN	Clinton consultant
• RUSSELL WEBB	Ozark Air Services
• BETSEY WRIGHT	Chief of Staff to Governor Clinton
• RONALD CLARK	Rose Law Firm
• DAVID KNIGHT	Rose Law Firm
• RICHARD DONOVAN	Rose Law Firm
• BEVERLY SCHAFER	Arkansas Securities Commissioner
• MARLIN JACKSON	Arkansas Bank Commissioner
• WILLIAM BRADY	Arkansas Securities Department
• CHARLES HANDLEY	Arkansas Securities Department

STATEMENT

Mark D. Fabiani
Special Associate Counsel to the President

May 17, 1996

Republican hypocrisy has reached new lows. The Pillsbury Reports -- the result of two years and \$4 million worth of work for federal regulators at the RTC -- vindicated the President and Mrs. Clinton. The Republicans did not like this conclusion, so first they tried to cover up the Pillsbury Reports. Now that the Reports have finally been made public, Republicans are trying to obscure the plain language of the Reports in the fog of Senator D'Amato's endless hearings. The Pillsbury Reports speak for themselves, and they support what the President and First Lady have said all along. No amount of Republican hypocrisy can change that fact.

Ms. HANSON. No.

Senator MURRAY. Do you know of anybody or have you yourself ever seen the criminal referrals?

Ms. HANSON. I have never seen the criminal referrals.

Senator MURRAY. Thank you.

Mr. Chairman, from my unique perspective, way down here, it seems to me that the chairs are getting empty and the yawns are getting larger so I'll yield back my time.

The CHAIRMAN. Do I understand you need to take a short break?

Ms. HANSON. Yes.

The CHAIRMAN. I don't want your lawyer deciding it. I want you deciding it, and there's a big difference between the two. I mean, I'd gotten an indication that you needed one, but if that's his thinking and not yours, we're going to continue, no disrespect to him.

Ms. HANSON. Let's continue for a few minutes.

The CHAIRMAN. Very good.

Senator Hatch, you're going to finish your line of questioning now.

Senator HATCH. I'll try to finish this time.

Ms. Hanson, when we finished before, you had called Mr. Nussbaum on February 8, 1994, and I wasn't quite sure what your answer was, but as I understand it, at the time you called him, you were of the view, personally, that the RTC civil case would not be handed over to Mr. Fiske at that time.

Ms. HANSON. I don't remember what my view was, at that point, sir. I've told you what I understood from Ms. Kulka.

Senator HATCH. You don't recall conveying that to Mr. Nussbaum?

Ms. HANSON. I don't.

Senator HATCH. You're not denying that you may have conveyed it to him at that time, are you?

Ms. HANSON. I'm not denying it. I don't recall.

Senator HATCH. Let me jump ahead a few weeks to February 24, 1994, the day that Mr. Altman testified before the Banking Committee. On that day, you received a call from Neil Eggleston. Is that right?

Ms. HANSON. That's correct.

Senator HATCH. On February 24, 1994. He was an attorney in the White House Counsel's Office. Correct?

Ms. HANSON. Correct.

Senator HATCH. He was, then, working for Mr. Nussbaum?

Ms. HANSON. Yes.

Senator HATCH. And Mr. Nussbaum called to ask you whether former U.S. Attorney, Jay Stephens, was the lead outside counsel representing the RTC in the Madison Guaranty matter?

Ms. HANSON. This was after the hearing on February 24, 1994, yes.

Senator HATCH. It was clear to you that Mr. Eggleston viewed this as a problem, wasn't it?

Ms. HANSON. He just asked me the question.

Senator HATCH. He wasn't the only Administration official who complained to you about the RTC's hiring of Mr. Stephens, was he?

Ms. HANSON. He was the only White House official that I spoke to about the matter.

Senator HATCH. But he wasn't the only one who complained to you about it, was he?

Ms. HANSON. There were other people in the Treasury Department that I spoke to.

Senator HATCH. Anybody else in the Administration?

Ms. HANSON. In the White House, no.

Senator HATCH. In fact, Joshua Steiner, the Chief of Staff to Treasury Secretary Bentsen, had told you that he thought Ellen Kulka should be fired for hiring Stephens, hadn't he?

Ms. HANSON. Yes, he did.

Senator HATCH. Michael Levy or Levy—I don't know how you pronounce it—who also works at Treasury, was part of this discussion you and Mr. Steiner had with Treasury. Is that correct?

Ms. HANSON. That's correct. I had several conversations with Mr. Steiner, but there was one where Mr. Levy was present.

Senator HATCH. Mr. Levy pointed out that lawyers hire lawyers based on their expertise as lawyers. Isn't that, basically, what he said?

Ms. HANSON. That's my recollection.

Senator HATCH. You agreed with him. Right?

Ms. HANSON. That's right.

Senator HATCH. Around this time, either Mr. Altman or Mr. Steiner telephoned you to ask how Jay Stephens had been hired. Is that correct?

Ms. HANSON. I was asked. I don't recall if it was in a telephone conversation.

Senator HATCH. Do you remember whether it was Mr. Altman or Mr. Steiner who called you at that time?

Ms. HANSON. I don't recall. I believe that my conversations were with Mr. Steiner, but I don't recall.

Senator HATCH. You told Mr. Altman or Mr. Steiner that Mr. Stephens was hired through the normal RTC contracting procedures. Isn't that what you said?

Ms. HANSON. That's correct.

Senator HATCH. In fact, you said that you were certain this was the case.

Ms. HANSON. That's correct.

Senator HATCH. But Mr. Altman or Mr. Steiner, nonetheless, insisted that you check to see if there was anything irregular in the process in which Jay Stephens was hired.

Ms. HANSON. I was asked to check—

Senator HATCH. Double-check it.

Ms. HANSON. To double-check how he was hired.

Senator HATCH. You understood, at the time, Mr. Steiner was extremely unhappy with the fact that Jay Stephens had been hired. Isn't that right?

Ms. HANSON. I wouldn't say—I wouldn't characterize it as extremely unhappy, but yes.

Senator HATCH. He was unhappy.

Ms. HANSON. Yes, he was unhappy.

Senator HATCH. In another conversation with Mr. Steiner, he asked you whether the RTC civil action could be given to the Whitewater Independent Counsel, Robert Fiske, rather than Ellen Kulka or Jay Stephens. Isn't that correct?

Ms. HANSON. I understood the question was whether the Independent Counsel could assume jurisdiction of the RTC investigation.

Senator HATCH. That was in another conversation with Steiner, he asked you whether the RTC civil action could be given to the Whitewater Independent Counsel instead of the other two, Kulka or Stephens.

Ms. HANSON. I understood it to be Stephens.

Senator HATCH. Right. You also knew, didn't you, that Mr. Steiner was receiving calls from the White House about Jay Stephens?

Ms. HANSON. I understood that.

Senator HATCH. Let me go back to that other question. In another conversation with Steiner, as I understand it, according to your deposition, he asked you whether the RTC civil action could be given to Whitewater Independent Counsel Fiske rather than to Kulka or Stephens. Do you remember stating that in your deposition?

Ms. HANSON. Rather than Stephens?

Senator HATCH. Rather than Fiske—excuse me, Fiske rather than Kulka or Stephens.

Ms. HANSON. Rather than Stephens, not Kulka—

Senator HATCH. Kulka and Stephens.

Ms. HANSON. She's the General Counsel of the RTC.

Senator HATCH. I mean Kulka and Stephens, yes. I think your deposition says, "I also recall a conversation with Mr. Steiner in which he asks whether the Independent Counsel could take over the civil investigation in lieu of Mr. Stephens," and it goes on from there. Do you remember saying that?

Ms. HANSON. Do I remember saying what?

Senator HATCH. In your deposition that I just read to you.

Ms. HANSON. Yes, I do.

Senator HATCH. And that's accurate?

Ms. HANSON. To my recollection, yes.

Senator HATCH. You also knew, didn't you, that Mr. Steiner was receiving calls from the White House about Jay Stephens?

Ms. HANSON. Yes, sir.

Senator HATCH. In fact, Mr. Steiner told you the people at the White House wanted to see if they could get rid of Jay Stephens. Isn't that correct?

Ms. HANSON. That is correct. He did say that. He said—what I recall him saying is, "Do you believe that they want to see if they can get rid of Jay Stephens and everyone agreed and understood that was ridiculous."

Senator HATCH. Do you recall what dates those conversations took place?

Ms. HANSON. It's my recollection that they took place after the testimony—the end of the day—later in the day, on February 24, 1994, possibly running over to the morning of February 25, 1994.

Senator HATCH. And others may have been several days earlier?

Ms. HANSON. Others?

Senator HATCH. With Steiner?

Ms. HANSON. No, they were all within a very close time frame.

Senator HATCH. But some of them may have taken place on February 25, 1994.

Ms. HANSON. I just don't recall, sir. It all happened within a very brief time frame.

Senator HATCH. Just a couple other questions. Ms. Hanson, would you agree that one of the concerns underlying the confidentiality of criminal referrals is that the premature disclosure can jeopardize the prosecution itself?

Ms. HANSON. That's correct, sir.

Senator HATCH. Did you not run such a risk when you informed the White House of the proposed Madison referral on September 28 and 29, 1993?

Ms. HANSON. I know Mr. Nussbaum to be a man of great integrity, an able lawyer. That was the person that I was giving that information to. I expected that he would use that information only for the proper governmental purpose that I gave. In fact, every piece of information that I was given by Mr. Roelle has appeared in the newsprint somewhere so, if there was a problem with jeopardizing the prosecution, it happened from the leaks out of the RTC and not from my conversation with Mr. Nussbaum. Mr. Nussbaum and I are two officials of the Executive Branch who are both bound by the Office of Government Ethics regulations.

Senator HATCH. Ms. Hanson, I was very interested in your statement to Senator Gramm, that the reason you contacted Bernard Nussbaum regarding the criminal referrals was that Mr. Nussbaum was the person at the White House in charge of investigations. I think that was the word you used.

Ms. HANSON. I don't believe that's quite what I testified, sir.

Senator HATCH. That was my recollection, maybe I misconstrued it, but that's—if that was so, then, that may be a breach in the well-orchestrated claim by the Administration—

Ms. HANSON. What—

Senator HATCH. —that all actions were taken in anticipation of press leaks. I'm just noting that for the record. If you didn't, that's OK, but that was my recollection.

Ms. HANSON. What my testimony was, if I could just clarify it, please, is that the internal White House procedures designated Mr. Nussbaum, the Office of Counsel to the President, as the contact for any discussions relating to anything involving an investigation, so as a—he was, as I understood it, with respect to the internal White House policy, the person who was the appropriate person to contact.

The CHAIRMAN. I just want to take a moment here. I was reviewing two documents that were given to me by the Counsel on the Republican side. We'll put the coding numbers in the record. One, is this list of talking points for Roger Altman's informational meeting with Mack McLarty, dated 2/2/94, at the bottom of which was this briefing point where Mr. Altman indicated that he had decided he was going to recuse himself from the decisionmaking process as Interim CEO of the RTC and so forth.

Then, there is a subsequent briefing document, which, apparently, was used by you and others up here on the Hill, that has the same items, although it drops off the last item, which is the recusal item. You made a passing reference, a few moments ago,

Copyright 1996 Chicago Sun-Times, Inc.

Chicago Sun-Times

January 21, 1996, SUNDAY, Late Sports Final Edition

SECTION: EDT; Pg. 32

LENGTH: 707 words

HEADLINE: Fact Fights Fiction Over Whitewater

BYLINE: Hillary Clinton

BODY: In 1992, in the midst of the presidential campaign, a story was reported about land in Arkansas that my husband and I invested in during the late 1970s.

Now, four years later, the Whitewater matter has been investigated by two congressional committees, two independent counsels, the Resolution Trust Corporation and scores of reporters. There have been 45 days of hearings in the Senate and House. The White House and our lawyers have turned over 50,000 pages of documents, and the president and I have answered every question put before us.

I personally have been interviewed by the Federal Deposit Insurance Corporation and the independent counsel, and have answered questions in writing submitted by the RTC and Sen. Alfonse D'Amato's committee.

Close to \$ 30 million in taxpayer money has been spent investigating Whitewater. But none of these exhaustive inquiries has turned up evidence that we did anything illegal, unethical or wrong.

Still, the questions keep coming. And so do the allegations and insinuations, even though we continually knock them down.

I want to assure the American public that we will continue to cooperate with all reasonable inquiries, as we have in the past. Nobody wants to end this controversy more than we do. But it becomes increasingly difficult to do so when the facts are lost in a blizzard of innuendo and shifting accusations. Let me give you an example of what I mean.

An independent inquiry, completed last month, found no evidence of wrongdoing on our part and called for an end to the RTC's investigation of Whitewater. But weeks passed before congressional investigators were willing to release these findings to the public. They did so only after heavy pressure from Democratic members of the Senate committee.

Since most Americans never heard about this report, let me

fill you in. It was conducted for the RTC by one of the nation's leading law firms, Pillsbury, Madison & Sutro. It took more than two years to complete and cost nearly \$ 4 million. A prominent Republican, former U.S. Attorney Jay Stephens, headed the inquiry.

It concluded that the president and I were passive investors in a failed land transaction and lost more than \$ 40,000 on Whitewater, as we have said all along. It also concluded that we had little knowledge and no control over the Whitewater project.

Further, it affirmed what we have said from day one: that we had no knowledge of any money flowing from Madison Guaranty Savings & Loan to Whitewater, and that we did not receive any loans or dividends from the savings and loan. (Madison Guaranty was acquired by our partner in Whitewater, James B. McDougal, some years after we invested in the project.)

- As for matters relating to Madison, the report found no evidence that I had any knowledge of any wrongdoing on the part of the savings and loan while I was at the Rose Law Firm.

Billing records located after the report was completed confirm that I did minimal legal work on Madison -- an average of about one hour a week over 15 months, just as I have said from the beginning.

Despite these findings, there was no news conference, no announcement, no effort by congressional investigators to make them public.

This detailed and impartial report was finally released last week, but only after one member of the committee told his colleagues, "The committee makes much ado about supposed failures of the White House to turn over documents, while it refuses to release voluminous documents that strongly buttress the Clintons' statements about Whitewater."

With each new round of allegations, we have responded with documents and facts. And each time we do, more questions are conjured up, shifting the ground once again.

As one veteran columnist observed, the investigations "promise horrors and prove nothing."

What will happen next during this presidential election year? I don't know what to expect. But I do know that we will continue to cooperate and give answers to questions about events that took place 10 to 20 years ago.

I also know that the American people are fundamentally fair. And in the end, I'm sure they will be able to separate fact from fiction, and to tell the difference between truth and scandal-mongering.

Transcript of Hearings

Before The

United States Senate

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

SPECIAL COMMITTEE TO INVESTIGATE
THE WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS

Hearing on

INVESTIGATION INTO THE WHITEWATER

DEVELOPMENT CORPORATION, AND

RELATED MATTERS

Washington, D. C.

WEDNESDAY, MAY 8, 1996

1 Mr. Burge. Yes, sir, it was.

2 Mr. Chertoff. And just so we are clear, this property
3 that the McDougals and the Clintons were financing through
4 your bank, they were not buying it for their own house, or
5 houses, they were buying it--it was raw land that they were
6 going to subdivide and try to sell?

7 Mr. Burge. That's correct.

8 Mr. Chertoff. So it was kind of a speculative real
9 estate venture? They were essentially hoping to make money
10 on the sale of the property; right?

11 Mr. Burge. That is correct.

12 Mr. Chertoff. And their ability to finance it, or to
13 pay back that debt depended significantly upon how well that
14 project was operated; right?

15 Mr. Burge. That is correct.

16 Mr. Chertoff. Now did you know that the down payment,
17 the \$20,000 down payment, was itself borrowed from another
18 bank at the time you made the \$182,000 loan?

19 Mr. Burge. No, sir.

20 Mr. Chertoff. That was not disclosed to you at all?

21 Mr. Burge. I didn't know about it.

22 Mr. Chertoff. Would that have made a difference to you?

23 Mr. Burge. All factors being considered, it may have
24 had an impact on our decision.

25 Mr. Chertoff. So had you known the fact that the down

1 payment that you received, the 10 percent, was itself a loan
2 from another bank, that would have had some impact on your
3 thinking?

4 Mr. Burge. It may have.

5 Mr. Chertoff. Certainly it is something you would have
6 wanted to be told?

7 Mr. Burge. I'm sure.

8 Mr. Chertoff. Now, Mr. Burge, am I right that the
9 \$182,000 loan was actually too big a loan to a single--for a,
10 single project for your bank to make?

11 Mr. Burge. Yes, sir; that's correct.

12 Mr. Chertoff. Explain why that is.

13 Mr. Burge. At that time in Arkansas, most state banks
14 were under a legal loan limit of capitalization at 20
15 percent of total capital. Again, the amount of the capital
16 in the bank escapes me at the present time, but our legal
17 loan limit was probably about \$150,000 to \$160,000.

18 Mr. Chertoff. So you were really not in a position as a
19 bank to make the entire value of the loan within your own
20 bank?

21 Mr. Burge. That's right.

22 Mr. Chertoff. \$182,000 was more than you were allowed
23 to make?

24 Mr. Burge. That's correct.

25 Mr. Chertoff. So how did you deal with that?

1 loan to a 17 percent loan, or an 18 percent loan.

2 I remember the discussion about it. There was a little
3 bit of humor that went with it: after all the work that was
4 done on changing the usury statute, we have to pay this
5 higher rate of interest?

6 But I assumed at that time it was more of an in-jest
7 type of thing.

8 Mr. Chertoff. Who said that?

9 Mr. Ritter. I don't remember if it was Mrs. Clinton or
10 Mrs. McDougal, but I think it was Mrs. Clinton.

11 Mr. Chertoff. So it is clear to you, at least in your
12 discussions with Mrs. Clinton, you had had discussions about
13 the amount of interest; she was aware of the terms of the
14 loan; she was aware of the interest rate; and you had a
15 conversation with her about it?

16 Mr. Ritter. I presume she was aware of all that. I
17 believe that she signed the document in my office, along
18 with Mrs. McDougal.

19 Mr. Chertoff. And she appeared generally knowledgeable
20 to you about financial matters, Mrs. Clinton did?

21 Mr. Ritter. There was nothing that indicated
22 differently.

23 Mr. Chertoff. Would you agree that--and I am going to
24 refresh your memory from your deposition--

25 Mr. Ritter. Okay.

1 Mr. Chertoff. --at page 52.

2 "Did both ladies appear to be knowledgeable about the
3 loan, about the real estate deal?

4 "Answer: They seemed to be, and they seemed to be
5 knowledgeable about the interest rate and everything else.

6 Mr. Ritter. That is true.

7 Mr. Chertoff. Did you also have telephone contact with
8 Mrs. Clinton about the loan?

9 Mr. Ritter. Yes, sir.

10 Mr. Chertoff. And on how many occasions?

11 Mr. Ritter. I don't remember how many, but at least
12 once. And through her staff occasionally there was
13 documents that was needed, so the follow-up would have been
14 through there.

15 Mr. Chertoff. Would you agree with me that you thought
16 Mrs. Clinton as well as Mrs. McDougal were both pretty
17 sharp, and they were fairly knowledgeable about real estate
18 and the transactions?

19 Mr. Ritter. I had that impression; yes, sir.

20 Mr. Chertoff. Now I want to ask, still focusing on this
21 loan, did you--what is the concept of loan-to-value?

22 Mr. Ritter. Well my opinion of course is probably
23 different than my predecessors simply because I viewed it as
24 speculative land for one thing, and probably would have
25 expected more of a down payment than that, but be that as it

1 Mr. Denton, Senator Simon asked you a question earlier
2 about whether the President asked you to do something
3 illegal, indirectly.

4 Could you elaborate on that, sir? What did he ask you
5 to do, and through whom?

6 Mr. Denton. Sir, I was attempting to make sure I
7 understood the question. I did not recall that it was
8 limited to being illegal.

9 My thought process was that many times transactions
10 occurred that the instructions or requests did not come
11 directly from Bill Clinton.

12 As an example, the \$20,000 loan that Union Bank made
13 came to me through an emissary, and perhaps through a couple
14 of them before I received it. That was my point I was
15 attempting to make.

16 In my opinion, that was not an acceptable banking
17 practice in extending that loan.

18 Senator Faircloth. Who asked you to extend the loan?

19 Mr. Denton. An emissary for the owner of the bank asked
20 that that loan be granted.

21 Senator Faircloth. An emissary for the owner of the
22 bank came to you as Executive Officer of the bank?

23 Mr. Denton. That is correct.

24 Senator Faircloth. Let me follow this now.

25 The owner of the bank sent you word that you ought to

1 extend this loan?

2 Mr. Denton. That is correct; yes.

3 Senator Faircloth. But you didn't, as executive of the
4 bank, didn't think the loan ought to be extended?

5 Mr. Denton. I'm sorry? I did not understand the last
6 words.

7 Senator Faircloth. You did not really think this loan
8 should be extended?

9 Mr. Denton. The point I make, in distinction, sir, is
10 that had it been an arms' length loan by a client walking
11 in off the street, I likely would not have granted that
12 loan.

13 Senator Faircloth. In other words, if the orders had
14 not come down from the owner of the bank, you would not have
15 extended the loan; you would have foreclosed?

16 Mr. Denton. A number of circumstances would have
17 entered into that picture. The loan, with the information
18 that I had in hand ^{and} with the financial information of the
19 borrowers that was supplied to me, under those conditions
20 that loan would not have been granted.

21 Senator Faircloth. Who came to you?

22 Mr. Denton. It was either Gene Smith or Paul Berry who
23 were employed by the bank and worked directly for Herbert
24 McAdams, the owner.

25 Senator Faircloth. Did the people that came to you, Ms.

Transcript of Hearings

Before The

United States Senate

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

IN RE: WHITEWATER

DEPOSITION OF PAUL C. BERRY

C O M M I T T E E C O N F I D E N T I A L

Washington, D. C.

FRIDAY, MAY 10, 1996

1 A Jim was -- Mr. McDougal was very successful
2 in a number of his land deals up to this one.

3 Q All right. Just to close the loop on the
4 \$20,000 loan, so it is your memory that it was Bill
5 Clinton as opposed to Mr. McDougal who talked to you
6 about the loan, about having the bank make that loan?

7 A He was the one that -- he discussed that he
8 was contemplating, he and Mrs. Clinton were
9 contemplating buying a piece of property on the White
10 River, and I said well, if you need to borrow any
11 money, I am sure we will like to handle it, which was
12 my routine remark to all customers that I had a
13 responsibility for when they expressed a credit
14 need.

15 Q At what point --

16 A I didn't want them to go to some other
17 bank. We would lose their business.

18 Q At what point did you come to learn that
19 the loan was not to finance the purchase of a piece
20 of property for Mr. and Mrs. Clinton, but was in fact
21 part of this larger deal to buy land and then sell
22 lots?

**A SUPPLEMENTAL REPORT ON THE
REPRESENTATION OF
MADISON GUARANTY SAVINGS & LOAN
BY THE
ROSE LAW FIRM**

Prepared For
FEDERAL DEPOSIT INSURANCE CORPORATION

Prepared By
**PILLSBURY MADISON & SUTRO LLP
225 Bush Street
San Francisco, California**

February 25, 1996

I. INTRODUCTION.

Pillsbury Madison & Sutro LLP ("PM&S") was retained by the Resolution Trust Corporation to assist in the investigation of possible civil claims against individuals and entities associated with Madison Guaranty Savings & Loan Association of McCrory, Arkansas ("Madison Guaranty"). As part of this investigation, PM&S was asked to investigate certain issues with respect to the legal services rendered to Madison Guaranty by the Rose Law Firm of Little Rock, Arkansas. The results of that part of the investigation are set forth in two reports dated December 28, 1995: A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm (the "Rose Report"); and A Report on the Rose Law Firm's Conduct of Accounting Malpractice Litigation Pertaining to Madison Guaranty Savings & Loan (the "Frost Report").

On December 21, 1995, it was learned that the Rose Law Firm (and, in particular, Hillary Rodham Clinton) had prepared an option agreement for a portion of the land associated with the Castle Grande real estate project undertaken by Madison Guaranty's real estate subsidiary, Madison Financial Corporation ("Madison Financial"). The same day, a set of interrogatories pertaining to that subject and related matters were sent to Mrs. Clinton. The interrogatories were lengthy. It was not expected that Mrs. Clinton could answer them fully by December 31, 1995, the date which marked both the end of the RTC and the expiration of the statute of limitations applicable to most possible claims that the RTC could conceivably assert against the Rose Law Firm.

Because of this imminent deadline, the RTC's Acting Chief Executive Officer directed PM&S to negotiate a tolling agreement with the Rose Law Firm pertaining to Castle Grande. PM&S did so, obtaining a 30-day agreement (later extended to March 1, 1996).

Originally it was contemplated that the additional time would be used chiefly to analyze and follow up on the interrogatory answers. The discovery of Rose Law Firm billing records at the White House and the ongoing hearings before the Senate Special Committee on Whitewater both provided new information, however, that made it advisable to investigate certain matters more fully.

This supplemental report summarizes the scope and results of the investigation conducted since December 28, 1995.

immediately put Hillary Clinton's Rose Law Firm on retainer for that amount.

"I hired Hillary because Bill came in whimpering they needed help," McDougal told The Times. He said he had no specific legal work in mind when he hired Hillary Clinton.

McDougal said he recalled the event vividly because he was so uncomfortable in the meeting — not over the retainer issue, but because throughout that morning conference, Clinton sat sweating in McDougal's new leather desk chair, an expensive gift from his wife.³⁰

4. Analysis.

Mrs. Clinton's recollections and Richard Massey's recollections differ in some respects, but for present purposes the differences are not material. Mrs. Clinton's interrogatory answer gives the impression that Massey brought in the work and Mrs. Clinton simply resolved a dispute over unpaid fees. Massey agrees that he initially "pitched" the work, but he does not believe he brought in the work, he did not discuss the subject of fees with Latham or with his colleagues at the Rose Law Firm, he never met McDougal and he does not recall asking Mrs. Clinton to be billing partner.

For present purposes, it makes little difference who was right. There is no hint of fraud or intentional misconduct in either version, and the mere act of retaining the Rose Law Firm did not harm Madison Guaranty in any respect. At worst, Mrs. Clinton may have neglected to tell her partners about her other business dealings with McDougal, but that would not have harmed Madison Guaranty, which, in the person of McDougal, knew all about those dealings.

McDougal's version of the retention obviously differs sharply from that of either Mrs. Clinton or Massey, but it too, even if credited, does not give rise to a cause of action. It is not a tort to ask a friend to retain one's wife as a lawyer. There is no suggestion that the money was to be a gratuity (as opposed to payment for work performed), nor is there any suggestion of an improper quid pro quo. Again, there is no proof of fraud, intentional misconduct or harm to Madison Guaranty.

In addition, there are a number of reasons to disbelieve McDougal's story.

30 William C. Rempel and Douglas Frantz, Fallout From Collapse of S&L Shadows Clinton, *Los Angeles Times*, Nov. 7, 1993.

First, McDougal may not be a reliable witness. In January 1996, McDougal's psychiatrist testified that McDougal's recollections are not trustworthy, although this one might be.³¹

Second, the statement that McDougal had no specific legal work in mind when he retained the Rose Law Firm obviously is wrong. The preferred stock issue had arisen at least a week before Mrs. Clinton met with McDougal on April 23, 1985, and work on this project began the same day as that meeting.³²

Third, and perhaps most significantly, the alleged economic motivation makes no sense. McDougal suggests that the Clintons needed \$2,000 a month and the implication is that this accounts for the monthly retainer in that amount, but there is no evidence that the Clintons ever received anything like \$2,000 a month from this engagement, and every reason to believe that they never received more than a trivial sum of money.

As a partner in the Rose Law Firm, Mrs. Clinton was paid a percentage of the firm's profits.³³ The percentage she received varied from year to year, in accordance with a formula, but it averaged roughly two percent:

Q I'd like to ask you a few questions now about your compensation from the Rose Law Firm, again, focusing on 1985, 1986, 1987.

Could you explain for me briefly the basis

31 According to a press account, on January 16-17, 1996, a psychiatrist testified that McDougal suffers from severe mental problems and no longer has a reliable memory of events. The psychiatrist said McDougal is bipolar and has a blocked carotid artery that deprives him of the normal flow of blood to the brain. He is being treated with lithium and Prozac but has a memory loss about 50% greater than normal for a man his age (55). The psychiatrist said that McDougal has a better memory of events involving people with whom he has emotional ties (such as the President). In that regard, the psychiatrist said he had reason to believe McDougal's story about the \$2,000 retainer. Sara Fritz, Doctor Says McDougal Has Memory Loss, *Los Angeles Times*, Jan. 10, 1996, at A10.

32 RLF2 03746-48; DKRT11 000836. On the other hand, it is not clear why Madison Guaranty retained the Rose Law Firm rather than its regular outside counsel, the law firm then known as Mitchell, Williams, Selig, Jackson & Tucker. The Mitchell, Williams firm had opened file no. 5615-9, entitled "Madison Guaranty - Sale of Stock," on February 6, 1985. It also had opened file no. 5615-10, entitled "Madison Guaranty - Broker-Dealer," on March 27, 1985. Both files are essentially empty. It does not appear that the Mitchell, Williams firm did much of substance with respect to either of these matters. Billings for matters 5615-9 and 5615-10 totaled \$155.35.

33 See generally Clinton Interview, Feb. 14, 1996, at 22-27; letter from Alden L. Atkins to Bruce A. Encson, Feb. 13, 1996, at 4-7.

on which you were compensated.

A Well, the Rose Firm, during those years, had a method of compensation that relied upon a five-year moving average of the percentage of an individual attorney's collections as a percentage of all of the firm's collections. And so you would do the work. You would bill for it. It would be collected and at the end of the year, all of the collections would be totaled up. And then each attorney's percentage would be calculated and then five years' worth of percentages would be averaged, and so that would determine what your percentage of the profits at the end of the fiscal year would be.³⁴

Q In these years, do you have any recollection as to what your percentage of the net profits was roughly?

A I don't have any specific recollection, but it was during this period of time somewhere around 2 percent.³⁵

Thus, if all \$2,000 a month had gone straight to the bottom line, Mrs. Clinton's share would have been approximately \$40 a month.

Even this overstates the situation. Part of the retainer was never earned and was returned to the client. Also, a law firm's revenues never go straight to the bottom line. Like any other business, a law firm has expenses (rent or mortgage payments for office space, salaries for associates and staff, and expenditures for law books, typewriters and all the other equipment required to set up a practice). These expenses must be paid before the partners can share what is left over. In the case of the Rose Law Firm, expenses consumed roughly half of each dollar of revenue.³⁶ Therefore, even if all the retainer had been earned in fees, Mrs. Clinton's share would have been less than \$20 a month.³⁷

34 Clinton Interview, Feb. 14, 1996, at 22-23.

35 Clinton Interview, Feb. 14, 1996, at 26.

36 Clinton Interview, Feb. 14, 1996, at 25-26.

37 These numbers are approximations, for illustrative purposes. According to counsel for the Rose Law Firm, Mrs. Clinton's actual share of net income attributable to Madison Guaranty (continued...)

In some law firms, "rainmakers" (people who bring in business) are compensated for bringing in that business, whether or not they do the actual work. There is no evidence, however, that this was true of the Rose Law Firm in 1985 and 1986.³⁸ To the contrary, the compensation system then in force created only a very indirect link between new business and compensation. A partner's percentage of the profits was determined not by looking at the business he or she brought in but at the money received for work actually performed by that partner, regardless of who brought in the matter.³⁹ Furthermore, the percentage was not determined solely by the current year's results but by averaging the partner's fee credits over the past five years. Thus, new business brought in during the current year, even if it materially increased the partner's fee credits, would have only an attenuated effect on that year's percentage. For all these reasons, the suggestion that the Madison Guaranty business was economically significant to the Clintons (or, for that matter, to the Rose Law Firm) finds no support.

Thus, regardless of which version of the retention one credits, a trier of fact is highly unlikely to find that there was anything untoward, let alone fraudulent or intentionally wrongful, in the circumstances of the Rose Law Firm's retention by Madison Guaranty.

B. The Rose Law Firm's efforts to help Madison Guaranty obtain permission to issue preferred stock and acquire a broker-dealer.

1. Introduction.

In 1985 and early 1986, the Rose Law Firm represented Madison Guaranty in an effort to obtain permission from Arkansas regulators to issue preferred stock (Rose's "matter 1") and to acquire and operate a broker-dealer firm (Rose's "matter 2"). The *Rose Report* concluded that the RTC did not have a basis consistent with the statute of limitations extender on which to assert claims against the Rose Law Firm relating to matters 1 and 2.⁴⁰ Nothing

37(...continued)

is \$230.68 for fiscal years 1986 and 1987 (i.e., the years ended January 31, 1986 and January 31, 1987) combined. Letter from Aiden L. Atkins to Bruce A. Encson, Feb. 13, 1996, at 6.

38 Letter from Aiden L. Atkins to Bruce A. Encson, Feb. 13, 1996, at 4-7, 45.

39 These were called "fee credits"; hence the fee credit reports such as RIC 120795, 97, 803, 10, 13, 20, 21, 24, 25, 61. Fee credits essentially represent hours work times standard billing rate less any sums not paid by the client, although the billing partner has discretion to make adjustments. Clinton Interview, Feb. 14, 1996, at 22-25; Letter from Aiden L. Atkins to Bruce A. Encson, Feb. 13, 1996, at 4-5; Clark Senate Testimony, Jan. 18, 1996, at 9.

40 See *Rose Report* at 48-53.

While Massey may have gained a passing acquaintance with the rule itself, he apparently had no reason to think that Madison Guaranty was in violation of the rule. He was advised by Madison Guaranty personnel and on that basis represented to the Arkansas Securities Department that Madison Guaranty was not in violation of Rule V(C) as of May 31, 1985. The information provided by Massey to the Securities Department suggested that Madison Guaranty could invest approximately \$900,000 more in its service corporation before any violation would occur. As the acquisition of the broker-dealer itself represented an expenditure of \$5,000 or \$6,000—in any event, nowhere near \$900,000—Massey probably had little occasion to give Rule V(C) any deep thought.⁹⁷

At most, the evidence suggests that Massey (and possibly others) had some actual or constructive notice of Rule V(C), which notice occurred when the rule was temporarily a concern with respect to the broker-dealer application.⁹⁸ Given such notice, it is hypothetically possible that someone might have recalled the rule some months later when working on the Castle Grande issue. Even if this occurred, however, there would be no aiding-and-abetting liability unless the person with notice then realized that a violation of Rule V(C) was about to occur and, with that realization in mind, went ahead and substantially assisted in the commission of the violation.⁹⁹

C. The Rose Law Firm's work on the IDC/Castle Grande project.

1. Introduction.

Between August and October 1985, while the Rose Law Firm was representing Madison Guaranty in matters 1 through 4, Madison Financial and Seth Ward acquired approximately 1,050 acres of land in southern Pulaski County (Little Rock) from a company called Industrial Development Corporation

⁹⁷ If he did give the matter some thought, he probably would have realized how little he knew. The information that Massey had provided only a "snapshot" view of the situation. Madison Guaranty grew rapidly throughout 1985. Its total assets more than doubled, growing from \$48,961,154 as of December 31, 1984 to \$109,680,561 at December 31, 1985. *General Report on the Investigation of Madison Guaranty Savings & Loan and related Entities* 13 (Dec. 28, 1995). Thus, the investment limitation (6% of total assets) would have grown as well, from approximately \$2.9 million as of December 31, 1984 to approximately \$6.6 million as of December 31, 1985. In addition, as shown above, for Madison Guaranty, at least some of the numbers used to perform Rule V(C) calculations fluctuated wildly as 1985 progressed. This is especially true of the overdrafts. There is no evidence that Massey (let alone Mrs. Clinton or others) had any knowledge of these fluctuations.

⁹⁸ Whether constructive notice will suffice in this context is discussed at page 156 below.

⁹⁹ *Rose Report* at 46-47.

of Little Rock ("IDC").¹⁰⁰ At the time, Seth Ward was working as a consultant to Madison Financial.¹⁰¹ (Ward is the father-in-law of Webster Hubbell, then a partner in the Rose Law Firm.) Madison Guaranty fully financed Seth Ward's acquisition of a portion of the IDC property. That acquisition took place pursuant to an agreement between McDougal and Ward that gave McDougal an option to obtain Ward's part of the property at cost, plus effective control of the entire property.

In the months following the acquisition, virtually all of Ward's land and portions of Madison Financial's land were sold to friends of Jim McDougal in transactions that, like Seth Ward's original acquisition, were fully financed by Madison Guaranty. A portion of the Madison Financial land that remained unsold was named "Castle Grande" or "Castle Grande Estates" and was developed for mobile homes.

As stated in the *Rose Report*, the principal issues are:

1. Was Ward a bona fide purchaser, or simply a straw man or nominee for Madison Financial?
2. If Ward was a straw man or nominee, was the acquisition fraudulent, or did it intentionally violate Rule V(C), the Arkansas regulation that limited the size of the investment that Madison Guaranty could make in Madison Financial—a regulation that management thought prevented Madison Financial from buying all of Castle Grande?
3. If fraud or intentional wrongdoing on the part of Madison Guaranty or Madison Financial did occur, was the Rose Law Firm legally responsible for the wrongful aspect of the acquisition and, if so, does it have any liability to the RTC (now the FDIC)?

The *Rose Report* concluded, on the evidence then available, that:

100 The land, most of which was undeveloped land, was located 15 miles south of Little Rock at the intersection of Highway 65/167 and 145th Street. IDC had owned the land since 1974. IDC had financed its acquisition through several Little Rock banks, including Union National Bank, Worthen Bank and Trust Company and First Commercial Bank, N.A. By 1985, these creditors were pressuring IDC to dispose of the property. Wilson Interview, May 10, 1994, tape 2, at 1.

101 Ward sued Madison Guaranty in 1987, after McDougal had left. *Ward v. Madison Guaranty Savings & Loan Financial Corporation*, No. 87-7580 (Pulaski Cty. Cir. Ct.) (hereinafter "*Ward v. Madison*"). Ward sought to recover almost \$400,000 in commissions that he said he had earned in connection with Castle Grande. The trial transcript and discovery from this case are cited frequently below. The trial transcript is cited as "*Ward v. Madison R.T.*" Depositions are cited by the name of the deponent, e.g., "Ward Deposition."

1. Ward probably was a straw man or nominee.

2. The RTC reasonably could state a claim against McDougal for fraud and for breach of his fiduciary duties in connection with the acquisition.¹⁰²

3. There was no substantial evidence that the Rose Law Firm aided and abetted whatever wrongdoing McDougal might have engaged in.¹⁰³

To some extent, the discussion with respect to this matter (and especially issue 3) was hampered by the lack of contemporaneous documents (the Rose Law Firm had virtually nothing) and clear recollections with respect to the acquisition. The billing records found at the White House and other newly acquired evidence add considerably to the sum of knowledge with respect to this matter. Taken as a whole, however, the new evidence does not change the conclusions stated in the *Rose Report*. The new evidence weakens to some extent the conclusion that Ward was a straw man or nominee, and that the acquisition therefore was wrongful, although those remain propositions that one could reasonably advocate. The new evidence has very little effect on the analysis of what the Rose Law Firm knew and did before the acquisition of the IDC property closed. The new evidence shows that, after the acquisition closed, lawyers at the Rose Law Firm (and in particular Mrs. Clinton) had more contact with Seth Ward and performed more services for Madison Guaranty than previously was known, but there remains no substantial evidence that these lawyers knew of or intended to aid and abet McDougal's apparent misconduct. For these reasons, the following conclusion, taken from page 78 of the *Rose Report*, remains valid:

The evidence taken as a whole does not amount to convincing proof that the Rose Law Firm knowingly aided and abetted a fraud, or a scheme to circumvent the Arkansas investment limitation regulation. This conclusion does not necessarily mean that the evidence exonerates anyone; it simply means, given the applicable legal standards and the statutory mandate under which the RTC [and now the FDIC] operates, that no reasonable basis has been found to recommend the filing of a

102 *Rose Report* at 55-61. The *Report* also noted that such a claim would not be cost-effective because McDougal has no money. McDougal filed for bankruptcy in September 1991 and obtained an order of discharge on January 17, 1992 (PMS0532, PMS0552), well before the enactment of the RTC Completion Act of 1993. The order of discharge could be set aside only if the RTC could prove a fraud on the bankruptcy court; proof that McDougal defrauded someone other than the bankruptcy court would be of no avail.

103 *Id.* at 74-78.

claim relating to the acquisition of Castle Grande against the Rose Law Firm.

2. The principal actors.

Before describing the acquisition and development of the IDC/Castle Grande property, it might be helpful to list the principal actors and describe each briefly.

Mrs. Clinton was a partner in the Rose Law Firm. She and her husband had invested with McDougal back in the late 1970s (Whitewater). She had represented the Little Rock Airport Commission, of which Seth Ward was a member, since roughly the same time. A litigator and not a real estate partner, she was the billing partner for all Madison Guaranty matters. She recorded no time to matter 5 until November 14, 1985, over a month after the acquisition was completed.

Charles Cook worked at First Commercial Bank, a creditor of IDC. The Rose Law Firm had represented First Commercial and two other banks with respect to this debt.

Harry Don Denton was Madison Guaranty's chief loan officer. He had worked with Robert Wilson at Union National Bank (where for a time he had been Jim McDougal's principal banker), and he introduced Seth Ward to McDougal. Denton served as loan officer with respect to Madison Guaranty's loans to Ward.

Richard Donovan was an associate in the Rose Law Firm's litigation section. After the acquisition of the IDC property, he, working with Mrs. Clinton, researched several legal questions with respect to the property's development. These questions concerned whether the property was within a "dry" township and therefore could not become the site of a brewery and tasting room, and whether the sewer and water facility need become a public utility and could provide sewer and water services to customers off the property.

Darrell Dover, a lawyer, represented IDC in the sale of its property to Madison Financial and Seth Ward.

Webster Hubbell was a partner in the Rose Law Firm's litigation section. He is Seth Ward's son-in-law. He did not record any time to matter 5, but Mrs. Clinton consulted with him briefly on two occasions and R. Davis Thomas, Jr. apparently wrote him a memorandum on the sewer and water issue.

R. A. "Brick" Lile was president of IDC, having succeeded Everett Tucker, who died.

William Lyon briefly showed some interest in buying a portion of the IDC property from Madison Financial for use as a brewery. Concerns about the legality of this usage prompted legal research by Mrs. Clinton and Richard Donovan. Between ca. 1980 and early 1984, Lyon had served on the Arkansas State Bank Board until Governor Clinton sought his resignation, an event Lyon blames on Jim McDougal.¹⁰⁴

Jim McDougal was the principal shareholder of Madison Guaranty. By 1985, he was no longer an officer or director of Madison Guaranty, but by most accounts he still controlled it and directed its daily operations, and he remained the chairman and president of Madison Financial, Madison Guaranty's real estate subsidiary.

Michael Schaufele was Seth Ward's accountant. He has known Webster Hubbell since childhood and they remain close friends today.

R. Davis Thomas, Jr. was an associate in the Rose Law Firm's real estate section and he worked briefly on the acquisition of the IDC property, exchanging one draft of a purchase agreement with Dover.

Thomas P. Thrash was a partner in the Rose Law Firm's real estate section. He also worked briefly on the acquisition.

Seth Ward, a semi-retired businessman, was a consultant to Madison Financial and purchased part of the IDC property in a transaction fully funded by Madison Guaranty. He is Webster Hubbell's son-in-law and had worked closely with Mrs. Clinton on Little Rock Airport Commission matters since the late 1970s.

Robert M. Wilson, a lifelong friend of Seth Ward, was a senior officer at Union National Bank. The Bank was a creditor of IDC, a client of the Rose Law Firm with respect to that debt, and a creditor of Jim McDougal personally. After retiring from Union National Bank at the end of 1985, Wilson worked for Madison Financial as a consultant and loaned money to Madison Financial as well.

These short sketches should not leave the reader with the impression that all these people were close to one another or knew each other equally well. Some of them knew each other quite well, but others were comparative strangers. In particular, it bears mention that McDougal and Ward were not close, having never met before Denton introduced them, and McDougal had no close ties to any of the people associated with IDC.

¹⁰⁴ Lyon Senate Testimony, Jan. 23, 1996, at 5-8, 16.

so, this would not have put the lawyers on notice that Ward would have no equity in the deal, would give Madison Financial a 270-day option to buy all his land back at cost and would receive commissions on everything that was sold. Thrash and Thomas both say they knew none of these things and a number of circumstances support their testimony.¹⁷² Furthermore, even if they had known some of these things, it does not follow that they knew anything about Madison Guaranty's Rule 17(C) problem, and both men deny knowing anything about the rule or Madison Guaranty's problem with it.¹⁷³ As shown in the next section below, there is no evidence that any Rose Law Firm lawyers (other than Hubbell) knew of these terms, and little reason to think that they had anything to do with this aspect of the deal.

c. The deal between McDougal and Ward.

Except for the discussion of the meeting among McDougal, Schaufele and Ward on McDougal's birthday, the presentation thus far has focused on the negotiations with IDC. The presentation now turns to the agreements between

171 (...continued)

MR. GIUFFRÀ: And you met with Mr. Ward on the 19th, correct? That's what your billing records show.

MR. THRASH: Yes, that's correct.

MR. GIUFFRÀ: Now, do you know whether you made this change in the draft after meeting with Mr. Ward?

MR. THRASH: What I think happened, counsel, is on the 9th I sent a draft agreement over to Mr. Dover which contained the affiliate language. I believe I was getting tied up in other transactions, and I asked Dave Thomas to come on and assist me in this transaction. Dave came on, he made some changes, he had several telephone conferences with Mr. Dover, I believe one with Seth Ward. This is - I'm speculating a little bit, because I don't remember Mr. Ward contacting us asking us to make this change. But I think that's probably what happened. Mr. Ward asked us to make this change and probably asked Dave Thomas and he made that change.

Thrash Senate Testimony, Jan. 31, 1996, at 107-08.

172 Thrash Interview, Dec. 1, 1995, at 31; Thomas Interview, Dec. 19, 1995, at 17, 19-23. The supporting circumstances include: Ward's financing was not executed until after closing and after Thrash's last timesheet entry. SW1-040; FDICHC 0089; DKRT11 000876. The Beach Abstract file, closing statements and title commitments do not mention financing. IG Ex. III-42. Thrash's timesheet entries tend to specify the documents he reviewed and nothing pertaining to financing is mentioned. DKRT11 000875-76. See Letter from Alden L. Atkins to Bruce A. Enciso, Feb. 2, 1996, at 1-2, which makes these points, among others.

173 Thrash Interview, Dec. 1, 1995, at 24-25; Thomas Interview, Dec. 19, 1995, at 18-19.

McDougal and Ward. As stated earlier, the main issue here is whether anyone at the Rose Law Firm knew of or worked on these agreements. The evidence just discussed strongly suggests that Thrash and Thomas had no such knowledge and did no such work. This leaves the others, who knew Ward far better than Thrash or Thomas did, and who and might reasonably have been expected to help him--namely, Mrs. Clinton and Hubbell.

The terms of the deal between McDougal and Ward are ambiguous, were sharply disputed and resulted in litigation that lasted for years. Those terms were set forth in five documents dated in September and October 1985, as well as in a host of documents executed the following spring. The five documents from September and October 1985 are:

<u>Date</u>	<u>Document</u>
Sept. 3, 1985	Memorandum from McDougal to Ward dividing the land and giving Madison Financial an option to buy Ward's part.
Sept. 13, 1985	Assignment of real estate to Ward.
Sept. 24, 1985	First letter from Ward to McDougal, countersigned by McDougal; marked "void"; gives Ward a commission; gives Madison Financial an option but places no price on the option; does not give Ward any real estate to keep after exercise of the option.
Sept. 24, 1985	Second letter from Ward to McDougal; backdated to Sept. 24, 1985; gives Ward a commission; pays Ward \$35,000 for the option; gives Ward 22.5 acres ("Holman Acres") to keep after exercise of the option.
Oct. 15, 1985	Loan of \$1.15 million from Madison Guaranty to Ward, purportedly to finance Ward's acquisition of his part of Castle Grande, entered into 11 days after IDC sold the real estate to Ward and Madison Financial. ¹⁷⁴

¹⁷⁴ Evidently Madison Guaranty financed the sale on its own before documenting the loan to Ward. The loan, once documented, showed that Ward had borrowed the entire purchase price of \$1,150,000 on a non-recourse basis; Ward put no money of his own at risk. IG Ex. III-48; *Ward v. Madison* R.T. 24-25.

Q Going back to tab 36 for a moment, just a couple of questions -- just one really. At the bottom here, Rick Massey has written a note, the last part of which says "Madison has continually had regulatory net worth problems."

Was that something you knew at this time?

A Well, I knew the idea behind the preferred stock offering was to try to raise money for Madison to be able to meet its capital requirements. I knew that back when the representation was undertaken by Mr. Massey.

Q And you knew also, didn't you, that unless and until Madison met its capital requirements, the securities department was not going to let Madison go ahead with the broker-dealer action?

A That's right. The securities commissioner had conditioned Madison's being able to go forward on its meeting its regulatory requirements.

Q Looking at tab 38 just for a second, is there any particular reason you would have cc'd Vince Foster on this July 17 memorandum?

A I believe that Mr. Rule mentions Mr. Foster in his memorandum that we were just looking at in the last sentence. "If you have any other questions, give me or Vince Foster a call." Mr. Foster was the attorney I worked for on the FSLIC representation and I assume that because he was mentioned in Mr. Rule's memo, I cc'd him.³⁴⁶

D. Analysis.

1. Matters 1-4 and 6.

The *Rose Report* found no basis to bring a claim based on the Rose Law Firm's work for Madison Guaranty with respect to these matters. As noted above, nothing in the new evidence changes that analysis. In addition, the tolling agreement does not cover these matters.

346 Clinton Interview, Feb. 14, 1996, at 91-96.

2. Matter 5.a. Introduction.

The investment in Castle Grande has been questioned on numerous grounds, but most of these have nothing to do with the Rose Law Firm. The acquisition of Castle Grande did, however, involve the Rose Law Firm to some extent. The acquisition can be questioned on the theory that Ward, having given Madison Financial an option on the land and having placed no money of his own at risk, was really a straw man purchaser for Madison Financial pursuant to a scheme to circumvent Arkansas law. This theory seems first to have been advanced in the *Ward v. Madison* litigation, in which Madison Guaranty and Madison Financial (two years after McDougal and Latham had been removed) stated the following in an answer to an interrogatory asking about their "unclean hands" defense:

Plaintiff [Seth Ward] personally profited from the transactions with Jim McDougal. With knowledge, the Plaintiff agreed to purchase a section of the Undeveloped Property [Castle Grande] in his name so that Madison Financial Corporation would not exceed its investment limitations, imposed by the FHLBB, of 6% of the assets of the corporation. In effect, Plaintiff acted as a straw man for the real estate purchase for the mutual benefit of himself, Jim McDougal and other individuals.³⁴⁷

Arkansas law (Rule V(C)) limits the amount of money that an Arkansas savings and loan may invest in real estate to six percent of assets.³⁴⁸ At the time of Madison Guaranty's last examination before the Castle Grande transaction, in 1984, Madison Guaranty had been criticized for violating this limitation, and in response Madison Guaranty's Board of Directors had promised to bring it into compliance with this limitation.³⁴⁹

347 Defendants' Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, dated June 2, 1988 in *Ward v. Madison*, answer to Interrogatory No. 18, at 11-12. Defendants did not do much with this theory at trial. Also, the regulation at issue is a state regulation, not an FHLBB regulation.

348 Rule V(C) of the Rules and Regulation of the Arkansas Savings and Loan Association Board. See *Ward v. Madison* R.T. 119; Latham Deposition at 7. See also IG Ex. III-50, at 2, minutes of Madison Financial's board of directors dated Jan. 21, 1985, which authorize McDougal to make any acquisitions he deems necessary, with the requirement that such acquisition not cause the Savings and Loan to exceed its 6% of assets limitation for investment in the Service Corporation

349 According to the Report of Examination as of January 20, 1984, Madison Guaranty's total investment in Madison Financial was \$2,386,590, or 14.1 percent of assets. PMS0331.

(continued...)

According to Madison Guaranty's Chief Financial Officer, Greg Young, the investment limitation meant that Madison Guaranty could not purchase the entire Castle Grande parcel itself.³⁵⁰ McDougal and Ward developed the idea of having Seth Ward purchase part of Castle Grande, so that the purchase price of the remainder to be purchased by Madison Financial would not exceed the limit. According to John Latham, there were at least three attractions to structuring the transaction this way:

- o Complying with the Arkansas statute.
- o Providing Ward with an opportunity to make some money.
- o Obligating Madison Financial only to purchase the portion of the property that it really wanted—the portion it hoped to use for a residential development, as opposed to the portion set aside for industrial development.³⁵¹

Two issues are apparent: Did the structure, rather than complying with Arkansas law, unlawfully seek to circumvent it, or was it even fraudulent? If creation of the structure was fraudulent or intentional misconduct, did the Rose Law Firm have anything to do with its creation, and therefore any responsibility for the illegality?

b. The legality of the acquisition.

The first question is whether the acquisition of Castle Grande was fraudulent or otherwise intended to violate Arkansas law. The short answer is that a court might hold that the acquisition, as structured, was fraudulent and violated Rule V(C) of the Rules and Regulations of the Arkansas Savings and Loan Association Board.

Fraud: McDougal seems to have concealed the terms of his agreement with Ward from Madison Guaranty's and Madison Financial's Boards of

349(...continued)

The board said it would comply with the regulation and had taken steps to do so by collecting on a loan made to Chns Wade in connection with Campobello. PMS0357.

350 *Ward v. Madison* R.T. 121. For reasons explained below, Young may have been wrong in supposing that Madison Financial could lawfully buy any of Castle Grande.

351 IG Ex. III-29, at 3. Latham recalled these three general objectives but could not recall any specific conversations on the subject or, for that matter, who developed the structure. The Rose Law Firm's Response to the Reports of the Inspectors General, dated Sept. 12, 1995 ("Rose Response to IG"), suggests that Latham himself developed the structure and flatly asserts that "Madison masterminded the structure of the purchase . . ." (Rose Response to IG at 52-53) but the cited evidence does not establish either proposition.

Directors; at the very least, Latham and Strayhorn testified that the Boards had not approved the terms, that they did not know the terms and that they could not find the relevant documents (notably the second version of the September 24, 1985 letter) in Madison Guaranty's files or Madison Financial's files.³⁵² This evidence, if credited, would establish concealment by someone who, as a director of Madison Financial, had a duty to disclose the facts. It would not, however, establish fraud on the part of anyone else. Ward as a consultant did not have the same duties as McDougal as a director. No evidence has been found suggesting that Ward knew McDougal would conceal the terms of this deal from McDougal's Boards.

An alternative theory of fraud is that the use of Ward as a straw purchaser was itself fraudulent, because it concealed Madison Financial's intent to acquire the entire parcel. That theory is best explored in light of the issue of whether the acquisition violated the Arkansas regulation and if so whether the use of Ward was designed to conceal that violation.

Violation of the Arkansas regulation: Rule V of the Rules and Regulations of the Arkansas Savings and Loan Association Board pertains to service corporations. Rule V(A) permits their creation and lists their permitting activities, which include "[a]cquisition of unimproved real estate lots, and other unimproved real estate for the purpose of prompt development and subdivision" Rule V(C) limits a savings and loan's investment in its service corporations. It provides:

C. Limitations:

An association may make any investment under this section if its aggregate outstanding investment in the capital stock, obligations, or other securities of service corporations and subsidiaries thereof (including all loans, secured or unsecured, to service corporations, or any subsidiaries thereof, and to joint ventures of such service corporation or subsidiaries, whether or not the association is a stockholder in such service corporations) would not exceed thereupon six (6%) percent of the association's assets. For the purpose of this section, the term "aggregate outstanding investment" means the sum of amounts paid for the acquisition of capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations.

352 *Ward v. Madison R.T.* 196; Latham Deposition at 18-19, 33-34.

To read the testimony of Latham, it would appear that the issue here is whether Madison Guaranty's investment in its service corporation Madison Financial includes the \$1,115,000 loaned to Seth Ward to pay for his portion of the IDC property as well as the \$600,000 that Madison Financial paid for its portion of the IDC property. Ironically, Madison Guaranty may have violated the regulation regardless of how it structured the deal.

With one exception (from May 1985), the weekly reports prepared by Greg Young and entitled "Investment in Service Corporation" have not been located. Therefore, it cannot be said with assurance what Latham and McDougal knew about their Rule V(C) situation when it came time to close the IDC acquisition. The most that can be said is that financial statements as of September 30, 1985 show that Madison Guaranty was roughly \$360,000 in excess of the limit as of that date, five days before the closing.³⁵³ Therefore, whether Madison Guaranty's investment includes only the \$600,000, or the \$1,115,000 as well as the \$600,000, the acquisition of Castle Grande would violate Rule V(C).

Be that as it may, the parties seemed to think that by reducing the investment to \$600,000 they would have avoided a violation of Rule V(C).³⁵⁴ As intent matters, the analysis turns on whether Seth Ward should be deemed

353 Madison Guaranty's assets totaled \$93.2 million. Madison Guaranty's Monthly Report to the FHLBB as of September 30, 1985, line 050. Six percent of this is \$5.6 million. According to Madison Guaranty's Monthly Report to the FHLBB as of September 30, 1985, Madison Guaranty's investment in Madison Financial totaled \$5.96 million, or roughly \$360,000 in excess of the limit. *Id.*, § K, line 005.

354 Alternatively, Madison insiders might have thought the transaction did violate the rule. Davis Fitzhugh suggested as much in his recent testimony when he was asked why McDougal had pressured him to buy the Levi Strauss building:

SEN. GRAMS: No, you're an employee of Madison and you said you were instructed to buy this parcel. Mr. McDougal told you to buy it. Did he explain why he wanted you to buy it again, because he had to shift some notes or dollars away from Madison; they were overbooked; so to speak, on land, and that they needed to move some of this land around, flip-flop, so to speak? Was that the way the instructions came to you?

MR. FITZHUGH: Well, it was well known at Madison at the time that because of this land purchase, they had more money -- or not more money; more assets in the financial corporation than they should. And this Levi Strauss Building was only one of many pieces of property that the savings and loan sold off. So I was not singled out to purchase something. It occurred with several other people and several other parcels.

Fitzhugh Senate Testimony, Jan. 31, 1996, at 37.

a bona fide borrower in his own right, separate and distinct from Madison Financial, or whether he should be deemed a straw man or nominee, who is simply holding the land for Madison Financial, so that the land did not show up on its books as a violation of Rule V(C). There are no reported cases construing Rule V(C). Nevertheless, the situation is similar to that presented by the federal regulation limiting loans to one borrower.³⁵⁵ That regulation limits total lending to one borrower to a percentage of an institution's assets. The pertinent issue is whether a borrower that appears to be separate and distinct actually is a straw or nominee.

A case from the United States Court of Appeals for the Ninth Circuit, *United States v. Brown*,³⁵⁶ is instructive. An Oregon thrift, State Federal Savings & Loan Association, had financial difficulties—in particular, a lot of foreclosed real estate (in savings and loan parlance, "real estate owned," or "REO") on its books that earned little revenue. New management wanted to get this REO off of State Federal's books. Management agreed with a real estate developer and borrower, Nevis, to loan him money so that he could buy the REO. State Federal's loans to Nevis, however, already exceeded the limit imposed by the loans to one borrower regulation. Therefore, State Federal's management entered into a series of transactions designed to put money into Nevis' hands while concealing that fact. One such transaction involved defendant Brown. The Court of Appeals described that transaction as follows:

He [Brown], in effect, had one of his companies (Marin Federal) purchase certain property from Nevis and obtain a loan from State Federal to finance that purchase. The money went to Nevis, and Nevis retained possession of and the right to repurchase the property. Brown guaranteed the loan but Nevis agreed to pay it off. The sale would not have been made had repurchase not been agreed to in advance. Brown and his company were quite clearly no more than nominees and vehicles for getting cash from State Federal to Nevis.³⁵⁷

355 Now 12 C.F.R. § 563.93 (1995). At the time, it was 12 C.F.R. § 563.9-3 (1985). An even closer analogy would be presented by the FHLBB's direct investment regulation, which, like the Arkansas regulation, limited investment in service corporations. 12 C.F.R. § 563.9-8 (1985), later renumbered 12 C.F.R. § 563.98 (1990), expired July 13, 1990.

356 912 F.2d 1040 (9th Cir. 1990). See also *United States v. Tuilos*, 368 F.2d 689, 691-96 (5th Cir.), cert. denied, 490 U.S. 1112 (1989); *United States v. Kindig*, 854 F.2d 703, 704-08 (5th Cir. 1988); *United States v. Griffin*, 579 F.2d 1104, 1109-10 (8th Cir.), cert. denied, 439 U.S. 981 (1978).

357 *United States v. Brown*, 912 F.2d at 1041.

On these facts, the Court of Appeals affirmed Brown's conviction for aiding and abetting bank fraud and false entries by management, but reversed his conviction for conspiracy.³⁵⁸

Compare the situation in *Brown* with the situation here. Madison Guaranty funded 100 percent of Ward's acquisition of his portion of Castle Grande, and did so weeks before Ward's loan application was approved. The loan was nonrecourse; Ward placed none of his own money at risk.³⁵⁹ Madison Financial had an option to buy back all of Ward's land, save perhaps for 22.5 acres. Madison Guaranty acted in all respects like an owner: It took charge of selling Castle Grande, including Ward's part, and sold the land; Ward probably did not have a chance to approve the sales prices. It conveyed parcels to the purchasers; typically, the deeds reflected Madison Financial, not Ward, as the vendor. Until parcels sold, Madison Financial, not Ward, collected the rents and paid all taxes, insurance and fees. On these facts, it seems highly probable that Ward would be deemed a straw. Indeed, Madison Guaranty alleged as much in defense of *Ward v. Madison*.³⁶⁰

As noted above, the use of Seth Ward as a straw has some of the earmarks of a fraudulent or intentional attempt to violate the law. Madison Guaranty's books and records were made to reflect a loan to a third person, not a straw. The terms of Ward's agreement with McDougal seem to have been hidden from others. Latham and Strayhorn say they knew nothing of the second letter of September 24, 1985, and Strayhorn says no copy of it could be located in Madison Guaranty's or Madison Financial's files.³⁶¹ At a minimum, it would seem that McDougal handled the transaction in a manner designed to mislead FHLBB examiners and regulators.

Even if this conduct were not deemed fraudulent, however, it seems likely that it would be deemed an intentional violation of the Arkansas regulation, and that would be actionable as an intentional breach of McDougal's fiduciary duties.

358 *Id.* at 1042-45. The court found ample evidence that "Brown engaged in activities which misrepresented the true borrower and true purpose of the loans, all with the intention of deceiving State and Federal officials, FSLIC, and FHLB," and therefore affirmed the aiding and abetting count. On the other hand, the court found no evidence that Brown, who participated in only one transaction, knew of the other defendants' broader conspiracy, and therefore reversed the conspiracy count.

359 In contrast, Brown had guaranteed Nevis' repayment.

360 Defendants' Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, dated June 2, 1988 in *Ward v. Madison*, answer to Interrogatory No. 18, at 11-12.

361 Latham Deposition at 16-20, 34-36; *Ward v. Madison* R.T. 194-95.

A fiduciary is not automatically liable for violating the law. Good faith attempts to manage a corporation's affairs may not give rise to liability even if a statute or regulation is violated.³⁶² But conversely, a fraudulent or intentional effort to violate a statute or regulation will almost certainly constitute a violation of a fiduciary's duty of care—indeed, as the *Brown* case illustrates, it may be criminal. Thus, while the business judgment rule is recognized in Arkansas,³⁶³ the rule obviously has no application to fraudulent or intentional attempts to violate the law.³⁶⁴

While this transaction looks like an intentional effort to violate the Arkansas regulation, and to cover up that violation, some evidence suggests that the parties might have thought the acquisition as structured would be lawful. Neither side in *Ward v. Madison* seriously urged that the transaction was unlawful. Hubbell, who paid some attention to the *Ward* trial and attended the closing arguments, doubts that Ward was a straw, at least as Hubbell understands the term:

Q. In 1985, did you give any thought whatsoever as to whether, given the terms as you understood them, Mr. Ward might be considered a straw man or nominee?

A. Yeah. You know, you use the word, and I remember it back in law school. But I didn't give it any consideration, you know. "Straw man" means, to me, somebody who you clear title through. So I don't think that's the way I would look at it, if I sold property, and you're trying to clear it to sell it through a straw man.³⁶⁵

In addition, the question was put to Latham, who testified in deposition that he believed the transaction was lawful:

Q. You said that Madison Financial could not have taken a deal as large as the I.D.C. deal that Mr. Ward brought because of regulations.

362 E.g., *FDIC v. Benson*, 867 F. Supp. 512, 521-22 (S.D. Tex. 1994) (applying Texas law).

363 *Hall v. Staha*, 303 Ark. 673, 678, 800 S.W.2d 396, 399 (1990); *RTC v. Eason*, 17 F.3d 1126, 1133-34 (8th Cir. 1994) (applying Arkansas law).

364 3A William Meade Fletcher, *Cyclopedia of the Law of Private Corporations* § 1040, at 51-52 (rev. ed. 1994). No Arkansas case on point has been located. To establish liability under Texas law, however, a plaintiff must show that the fiduciaries "participated in acts that they knew were illegal at the time." *FDIC v. Benson*, 867 F. Supp. at 522.

365 Hubbell Interview, Dec. 27, 1995, at 22:17-26.

A. I think at that point in time that was correct.

Q. Madison Financial could have taken the deal, could it not, if it had received financing from someone other than Madison Guaranty?

A. Yes.

Q. And there was no violation of the regulations from Mr. Ward to receive financing from Madison Guaranty?

A. I don't think so, as long as Seth had the financial ability to assume that obligation on his own.³⁶⁶

Given the apparent attempts to conceal the substance of the arrangements between McDougal and Ward, one may question whether Latham seriously believed what he said. In any event, the conclusion he reached is of doubtful merit. One can assume that Seth Ward had the ability to assume the obligation on his own.³⁶⁷ Even so, two problems remain with Latham's position. First, factually speaking, Ward had no reason or incentive to pay the loan unless he could profit by doing so, for the loan was nonrecourse. Second, legally speaking, Ward's "financial ability to assume that obligation on his own" is not a defense where the transaction is structured to conceal a violation of a regulation limiting the ability of the financial institution to make the loan.

An Arkansas case decided a few years before the Castle Grande transaction, *United States v. Parsons*,³⁶⁸ illustrates the second point. Parsons was the treasurer of a school's credit union. He needed more money than the credit union could lawfully loan to him. Therefore, he convinced several teachers to take out loans in their own names and deliver most of the proceeds to him.³⁶⁹ On appeal from his conviction for misapplication of credit-union funds and false entries, he argued that the jury should have received an instruction that he could be convicted only if the prosecution proved that he knew the other teachers lacked the ability and intent to repay their respective loans. The court rejected this argument, holding that where the straw is used

366 Latham Deposition at 27.

367 A financial statement for Seth Ward as of 1985 has been located. It shows ample net worth.

368 646 F.2d 1275 (8th Cir. 1981).

369 *Id.* at 1276-77.

to conceal violation of a legal limitation on lending, the financial condition of the putative borrower is irrelevant.³⁷⁰

The analysis in this section to this point parallels that in the *Rose Report*. Having reached this point, however, it must be conceded that the argument that Ward was a straw is weaker than it seemed on December 28, 1995. Notwithstanding the *Parsons* case, one must grant that Ward's recent testimony about his desire to buy the IDC property himself, and his ability to do so, might well influence a trier of fact to find that Ward was not a straw. Certainly a man who was ready, willing and able to buy a property, but did not do so because he recognized that he owed a duty of loyalty to his principal,³⁷¹ seems much less like a straw than someone who never had the slightest interest in a property but simply was doing the bidding of another.

Even so, the evidence suggests that the RTC could reasonably state a claim against McDougal for fraud and for breach of his fiduciary duties. Greg Young recently described the transaction as a "straw transaction," adding that Madison had "made him [Seth Ward] the loan to park that land" until Madison had the ability to buy it.³⁷² Ward himself summed it up in his recent deposition when he said to the young attorney examining him:

Q. But you were offered a transaction that was basically risk free to you by Mr. McDougal?

A. Yeah, and I took that. And you would have too.³⁷³

Perhaps McDougal could defend himself by arguing that he had a good-faith belief that the structure was lawful: at this point it is hard to determine how persuasive such a defense might be. In any event, such a claim, if brought against McDougal alone, would not be cost-effective.³⁷⁴

The evidence as to Ward is much less compelling than the evidence as to McDougal. There is no clear evidence of an intent to conceal. Ward says

370 *Id.* at 1279-80.

371 Ward Deposition, Feb. 12, 1996, at 13.

372 Young Interview, Feb. 20, 1996, at 3.

373 Ward Deposition, Feb. 12, 1996, at 111-12.

374 McDougal filed for bankruptcy in September 1991 and obtained an order of discharge on January 17, 1992 (PMS0532, PMS0552), well before the enactment of the RTC Completion Act of 1993. The order of discharge could be set aside only if the RTC could prove a fraud on the bankruptcy court; proof that McDougal defrauded someone other than the bankruptcy court would be of no avail.

he had no idea that the transaction might violate Rule V(C).³⁷⁵ One might argue, however, that the nonrecourse financing coupled with the other terms looked too good to be true. Thus, based on *Brown*, perhaps a rather weak claim might be stated for aiding and abetting in a fraud or for an intentional violation of the Arkansas regulation. The strength or weakness of such a claim need not be considered further. Such a claim cannot properly be brought against Ward because he has been released.³⁷⁶

For purposes of this report, the ultimate question is not whether McDougal or Ward could profitably be sued, but whether the Rose Law Firm aided and abetted them in what looks like fraudulent or intentional misconduct.

c. The role of the Rose Law Firm.

Despite the new billing records, the extent of the Rose Law Firm's involvement in the IDC acquisition is not well documented, and it has been further obscured by faulty memos. Seth Ward, who negotiated the acquisition for Madison Financial, denied that the Rose Law Firm had any involvement in the purchase of Castle Grande either on behalf of Madison Financial or himself—a statement that is demonstrably incorrect.³⁷⁷

I have been specifically asked whether I had any discussions with anyone from Rose concerning the Industrial Development Commission (IDC) property acquisition while I was at Madison. I would think that we used some lawyers, but I do not recall who it may have been, and do not believe it to have been Rose. I do not recall speaking to any lawyers concerning water issues in that project, and certainly had no discussions with anyone concerning delivering water services off-site. I have no knowledge of ever discussing at all any issues concerning a

³⁷⁵ Ward Deposition, Feb. 12, 1996, at 14-15.

³⁷⁶ Ward received a general release from the RTC when he settled *Ward v. Madison*, a settlement in which the RTC recovered \$325,000.

³⁷⁷ Seth Ward Interview, Apr. 29, 1994, at 1. Ward told the IG that he does not remember the Rose Law Firm doing any legal work for Madison Guaranty on the Castle Grande transaction, or on anything else. IG Ex. III-35, at 2. Ward was not alone in denying the Rose Law Firm's role in the transaction. When asked about Castle Grande, other Madison Guaranty directors and officers did not mention the Rose Law Firm as having any involvement in the sale. E.g., Steven Cuffman Interview, Apr. 26, 1994, tape 1, at 34-35; Sarah Hawkins Interview, Apr. 11-14, 1994, at 71-72; Don Denton Interview, Apr. 28, 1994, at 7-8. Jim and Susan McDougal were deposed but each invoked the Fifth Amendment and declined to answer all questions.

brewery, liquor licenses or a question of whether a particular jurisdiction was wet or dry.³⁷⁸

He is not the only one who seems to have forgotten things; the Rose Law Firm lawyers who handled the transaction also have little or no recollection of it.³⁷⁹

The documents that Darrell Dover and the Rose Law Firm have produced do not deal at all directly with the arrangements between Ward and Madison Financial.³⁸⁰ As discussed above, the disappearance of the Rose Law Firm lawyers during the drafting phase of the IDC acquisition is peculiar, but nothing convincingly demonstrates that the lawyers knew Ward was a straw and with such knowledge substantially assisted with improper aspects of the deal. The agreement, in any of its various drafts, is an innocent-looking document that would place nobody on notice of a Rule V(C) violation. Even the change in the language from "affiliate" to "entity or individual" is not the sort of thing that would have suggested incipient wrongdoing. To the sellers, this was an all-cash deal. IDC and the banks really could care less to whom Madison Financial might assign part or all of the property.

One can assume that Ward told Thrash and Thomas that he was the assignee and therefore needed to have the language encompass him, an individual but not an affiliate.³⁸¹ Even so, this would not have put the lawyers on notice that Ward would have no equity in the deal, would give Madison Financial a 270-day option to buy all his land back at cost and would receive commissions on everything that was sold. Thrash and Thomas both say they knew none of these things; circumstances support their testimony.³⁸² Furthermore, even if they had known these things, it does not follow that they knew of Madison Guaranty's Rule V(C) problem; both men deny knowing anything about the rule or Madison Guaranty's problem with it.³⁸³ There is no

378 Signed statement of Seth Ward, Sept. 29, 1994, IG Ex. III-35, at 2-3.

379 Thrash Interview, Dec. 1, 1995, at 8:17-9:3, 10:22-11:18. Thomas Interview, Dec. 19, 1995, at 6:23-7:4, 8:13-17. Hubbell recalls the transaction but not having any role in it himself. Senate Hearing Transcript, Dec. 1, 1995, at 102:15-103:11; Hubbell Interview, Dec. 27, 1995, at 4:5-9:8.

380 The one exception is RIC 109218 through RIC 109219, the copy of the September 24, 1985 letter produced by the Rose Law Firm. How it got into the Rose Law Firm's files is unclear; Hubbell is the most likely source.

381 Thrash Senate Testimony, Jan. 31, 1996, at 107-08.

382 See letter from Alden L. Atkins to Bruce A. Encson, Feb. 2, 1996, at 1-2.

383 Thrash Interview, Dec. 1, 1995, at 24-25; Thomas Interview, Dec. 19, 1995, at 18-19.

evidence that any Rose Law Firm lawyers (other than Hubbell) knew of these terms.

Hubbell, however, stands in a different situation. While he says he did not work on this matter, he also says that he knew of the arrangements between Ward and Madison Financial, at least in broad outline, and he knew them shortly after the transaction closed. Hubbell knew of these matters because Ward discussed the transaction with Hubbell with some frequency. For example, Ward acquainted Hubbell with the terms of the September 3, 1985 memorandum:

Q. Let's turn to the next page, which says "Defendant's Exhibit 31" and also says "SW1-004." It's a memorandum dated September 3, 1985. Again, let me ask you if this is a document you saw in 1985 or 1986.

A. I may have seen it after the closing. Seth may have brought a copy home. So I can't say that I haven't seen it. Okay?

Q. Okay.

Do you have any recollection of discussing the terms of this document with Mr. Ward?

A. He discussed everything. So I mean -- I mean this specific document, no. But his deal with Madison, he talked about it all the time.

Q. Approximately how often would you see your father-in-law in this time period?

A. Fairly regularly. Not as often as after his accident. But fairly regularly.

Q. Again, focusing on '85, '86, could you be any more specific as to "fairly regularly"? Do you mean once a week?

A. At least once a week.³⁸⁴

384 Hubbell Interview, Dec. 27, 1995, at 16:25-17:22.

Through these conversations, Hubbell came to know the terms of the arrangements between Ward and Madison Financial:

Q. You mentioned that you learned that Madison was going to lend him [Ward] the money to buy a part. Did you know anything beyond that, about the terms in which the money would be loaned to your father-in-law?

A. I learned that later on.

Q. But in 1985, you did not know those terms?

A. I probably did after it closed; but, you know, exactly when, I couldn't tell you.

Q. When you say you probably did after it closed, why is that? Is there a particular event that brought it to your attention?

A. Well, I mean the deals changed, you know; and so he would have told me that he was borrowing the money, you know, as opposed to Madison just buying it all and him getting a commission.

Q. At the point at which you learned he was borrowing the money and was buying part of the property, did you have any understanding as to whether he was borrowing 100 percent of the money needed to buy his part of the property or some lesser amount?

A. My understanding was it was always 100 percent.

Q. Did you have any understanding as to whether it was recourse versus nonrecourse?

A. I believe -- you could tell me, but I believe it was nonrecourse. I believe that's been an issue. I can't tell you when I learned.

Q. What was your understanding as to the arrangement with respect to commissions on the sale of the property?

A. If I remember right -- but I may have learned this later on -- there was a written agreement between McDougal and my father-in-law. And I think in general it was 10 percent on

anything he sold, 10 percent on any commercial real estate; and then a lesser percentage on residential real estate.

Q. When do you think you learned those facts?

A. It had to be sometime after the closing. My impression was that initially he was going to get paid when the deal closed, you know, like most real estate people. At some point, that changed.³⁸⁵

MR. BEN-VENISTE: Now, what was your understanding about how it was that he came to take a portion of the IDC property in his name?

MR. HUBBELL: In my understanding, and that's again based on conversations, was that when it came close to closing that there was some concern about Madison taking all of the property in its name and that Mr. Ward offered to take a portion in his name until it was sold, if Madison would lend him the money to do so.

MR. BEN-VENISTE: And was that the extent of your knowledge?

MR. HUBBELL: It was all kind of after the fact.

MR. BEN-VENISTE: Right. And do you recall discussing that knowledge with anyone at the Rose Law Firm?

MR. HUBBELL: I might have, but I don't have any recollection of it.³⁸⁶

Hubbell also understood that Madison Financial could not buy all of the property in its own name:

Q. At this time, September 1985, what was your understanding, if any, with respect to the reasons why Madison was not going to buy the entire property itself?

A. My understanding was based on what Mr. Ward told me, that maybe whoever closed the loan was -- was that Madison

385 Hubbell Interview, Dec. 27, 1995, at 15:1-16:15.

386 Hubbell Senate Testimony, Feb. 7, 1996, at 13-14.

had limits on what it could own in its own name, and so Mr. Ward was going to own part of it until it could be sold.³⁸⁷

The foregoing is fairly consistent with what Hubbell told the RTC's Inspector General, as summarized by an investigator:

HUBBELL said that WARD told him that he was negotiating on behalf of MADISON to buy the IDC property, which would then be split up between MADISON and WARD. HUBBELL said that Ward may have told him that MADISON could only buy a portion of the money [sic], and that the limitation may have been regulatory. HUBBELL recalled that Ward was negotiating the purchase as if he was the sole purchaser because the purchase price would have been higher if the sellers thought that McDUGAL was the actual purchaser. WARD also had told HUBBELL that his part of the purchase would be financed with money borrowed from MADISON GUARANTY.³⁸⁸

Exactly when Hubbell acquired all this information is unclear. He says he gained most of it after closing (October 4, 1985), but that might be incorrect. As shown by the passage quoted above, on at least one occasion Hubbell said he had such information in September 1985. In addition, Hubbell, in the conversation with Schaufele after McDougal's birthday party in August 1985, declined to assist Ward with the transaction, citing conflicts. That statement provides a basis to infer that Hubbell knew something of the terms of the transaction at this time.

It is much harder to prove what other Rose Law Firm lawyers knew (if anything) about these matters. Other than Hubbell, all of them have denied knowing the salient terms that arguably make Ward a straw.

d. The elements of aiding and abetting.

To be liable for aiding and abetting, one must be generally aware of his role as part of an overall illegal or tortious activity, and one must knowingly and

³⁸⁷ Hubbell interview, Dec. 27, 1995, at 21:25-22:6.

³⁸⁸ IG-Ex. III-69, at 6-7. Regarding his role in the acquisition, Hubbell wrote a letter to the FDIC in June 1989 stating that he had "not represented Mr. Seth Ward in connection with any issue or matter relating to his disputes with Madison Guaranty." RTCKC42271; Hubbell interview, Dec. 27, 1995, at 36:10-19.

substantially assist the ~~principal violation~~³⁸⁹. There may have been a principal violation here, but there is no substantial evidence that the Rose Law Firm knowingly and substantially assisted in its commission.

Knowledge: Mrs. Clinton, Thrash and Thomas, all of whom recall very little about the transaction, say they had no savings and loan experience, did not know of the Arkansas investment limitation regulation, did not know of the 1984 FHLBB Report of Examination or Supervisory Agreement, and did not know the terms on which Seth Ward purchased his portion of Castle Grande.³⁹⁰ No substantial evidence to the contrary has been found except possibly as to Hubbell.³⁹¹ Hubbell knew in 1985 the essential terms of the transaction, including the aspects that arguably make it a straw-man arrangement, but he says he did not learn these things until after the transaction closed.

If Hubbell had knowledge at a relevant time, it is possible that this knowledge might be imputed to the Rose Law Firm. As a matter of partnership law, that may happen if the partner who knows something but is not acting in the particular matter "reasonably could and should have communicated it to the acting partner."³⁹² Even so, it is unclear that the imputation of Hubbell's knowledge to the firm would mean that otherwise-innocent acts performed by other lawyers in the firm, who lacked actual knowledge of these matters, would somehow become "fraud" or "intentional misconduct" within the meaning of the statute of limitations extender. There is no relevant case law under the extender statute, nor much by way of analogy in cases construing the Uniform Partnership Act.

389 *Restatement (Second) of Torts* § 876 (1979). See generally *Rose Report* at 46-48. It should be noted that somebody has given a copy of the *Rose Report* to the Rose Law Firm and somebody associated with President and Mrs. Clinton. Rose Law Firm Chief Operating Officer Ronald Clark has read the *Rose Report*. Clark Senate Testimony, Jan. 18, 1996, at 16, 23. Mrs. Clinton had it described to her, but not in any detail. Clinton Interview, Feb. 14, 1996, at 106: Were the FDIC to institute litigation against the Rose Law Firm, it would not help to have the *Rose Report* in the hands of the other side.

390 Thrash Interview, Dec. 1, 1995, at 4:20-5:12, 7:23-26, 23:25-24:25, 24:26-25:20, 31:13-22, 32:1-12. Thomas Interview, Dec. 19, 1995, at 5:4-12, 17:13-19:10, 23:3-7, 28:15-29:12. Letter from Alden L. Atkins to Bruce A. Encson, Feb. 2, 1996, at 1-2.

391 Mrs. Clinton might well have seen references to Rule V(C) in Massey's correspondence with Beverly Bassett and Charles Handley, but even assuming she cast her eye over this letter, there is no reason to think it so much of an impression on her that it would have come to mind months later in a different context. Also, Massey's letter demonstrated, apparently to Handley's satisfaction, that Madison Guaranty was not close to being in violation of Rule V(C) at the time.

392 1 Alan R. Bromberg and Larry E. Ribstein, *Bromberg and Ribstein on Partnership* § 4.06, at 4:73 (1994), quoting Uniform Partnership Act § 12 (1914).

~~*Substantial assistance:* The argument here also is weak at best, although the reasons for this weakness differ as between the two principal documents.~~

~~*The September 24, 1985 letter:* Hubbell says that he did not draft the September 24, 1985 letter,³⁹³ and he told the Senate that he "wasn't party to the representation of Madison and my father-in-law in that acquisition, but I was aware of it generally."³⁹⁴ The evidence summarized above is not entirely consistent with Hubbell's declaration that he "wasn't party to the representation of Madison and my father-in-law in that acquisition," but it suggests at most that Hubbell may have cast a fairly casual eye over the September 24, 1985 letter.~~

Mrs. Clinton also says that she did not draft the September 24, 1985 letter. To disbelieve her, one must adopt a whole series of fairly implausible assumptions about when the letter really was drafted and what Mrs. Clinton was working on in November 1985. As already stated, a trier of fact is highly unlikely to find that these assumptions are supported by the weight of the evidence.

~~*The May 1, 1986 option:* This option has less immediate significance than the September 24, 1985 letter. The option did not assist in the closing of the acquisition. It, unlike the letter, was created many months after the transaction closed. The option, unlike the letter, does not prove any awareness on the part of its author of Ward's arrangements with Madison Financial. Such awareness could be inferred only if one credits the Latham/Young "complex theory" that the option was an attempt to obtain capital-gains treatment for Ward's commissions. If, instead, one credits Ward's view that the option had nothing to do with the commissions (as the jury in *Ward v. Madison* obviously did), then the author of the option need not have known anything about Ward's commissions, let alone his 100 percent financing or the other terms embodied in the September 24, 1985 letter. For these reasons, the option seems, at most, tangentially related to the acquisition itself.~~

Of the two theories, the simple theory probably is the more believable; the jury accepted it and it has the virtue of being simple and consistent with the September 24, 1985 letter. Nevertheless, the complex theory has its attractions, too: in some respects it looks like just the sort of thing that McDougal would attempt. Be that as it may, there is no evidence that Mrs. Clinton had any information that would have put her on notice of the facts underlying the complex theory. She has denied having such knowledge, and the circumstances support her. It is highly unlikely that, even if she had been

393 16 G. Ex. 111-69, at 6-7.

394 Senate Hearing Transcript, Dec. 1, 1995, at 102:22-103:2.

so inclined, she would have drafted a document having a complex (and highly dubious) tax purpose in two hours.³⁹⁵ It also is unlikely that, had she known that purpose, she would have described the wrong property. For these reasons, a trier of fact is highly unlikely to conclude that Mrs. Clinton either knew of any wrongful purpose connected with the option (if there was one), or had the intent to aid in the commission of that hypothetical wrong.

A third theory might be suggested. The option might be related to an effort to document Ward's rights. Ward and others have testified to such an effort, noting the need to have some written evidence for the FHLBB examiners to see of Ward's entitlement to the commissions.³⁹⁶ In addition, a lawyer (such as Mrs. Clinton) working on FSLIC matters might have gained familiarity with the *D'Oench Duhme* doctrine and thereby developed a concern that an oral or inadequately documented arrangement might not prove enforceable should Madison Guaranty fail.³⁹⁷ Hubbell says that Ward was anxious about whether he would be paid.³⁹⁸ In such circumstances, it would not be unusual to ask a lawyer to help reduce one's rights to writing.

On analysis, however, this theory is really only a variant of the "complex theory." The theory that Mrs. Clinton might have been helping Ward to avoid a *D'Oench Duhme* problem makes sense as applied to the option only if one credits the view that the option bore some relationship to Ward's commissions. If this view is accepted, then the option might be deemed a rather opaque and perhaps misleading means of documenting Ward's entitlement to commissions. But, as noted, this is a theory the jury in *Ward v. Madison* rejected, and it suffers from a number of problems, starting with its inconsistency with the September 24, 1985 letter and going on to its dependence on Latham and Young, witnesses whom it would be easy to impeach.³⁹⁹

In any event, Mrs. Clinton does not recall being asked for such advice or rendering such services:

395 DKRT11-000922. The timesheet entry does not suggest that Mrs. Clinton spoke to anyone else at the firm, e.g., a tax lawyer, and Mrs. Clinton usually was meticulous about recording such intra-office conferences.

396 *Ward v. Madison* R.T. 27-29, 49-54, 101-02, 114-15.

397 *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942). As used in this report, references to the doctrine also include the related statute, 12 U.S.C. § 1823(e).

398 As noted above, Seth Ward told Webster Hubbell in the spring of 1986 that he "had some sense Madison was having trouble" and was "very anxious" about whether he was going to be paid the commissions he was owed. Hubbell Interview, Dec. 27, 1995, at 43:21-44:12.

399 Latham pled guilty to bank fraud. Young's problems as a witness are much less serious but there are a number of inconsistencies in his testimony.

Q . . . At the beginning of this, I asked you a little bit about the D'Oench Duhme Doctrine and you described your understanding for me. Let me ask you this.

With respect to the option you prepared, the May 1, 1986 option, is it possible that was prepared because -- I'm just asking -- I'm not suggesting this as evidence -- I'm just asking the question. Because you had advised Mr. Ward that he needed to document his compensation arrangements with Madison Guaranty, that he was undertaking certain work for Madison, evidence which you indicate you don't recall and perhaps never knew about that he was to be paid some commissions. Is it possible that he had come to you and said "look, I don't know if I'm going to get paid or not. It's been six months. I haven't been paid, and the examination is underway. I'm a little concerned about whether or not I'm going to get paid."

Is it possible you advised him you ought to reduce this to writing? If you don't have it in writing, you may not get paid and if the institution is ever taken over, you could be out of luck because there's no written record? Is it possible you gave him such advice?

A I don't recall giving him such advice. I don't recall knowing enough about Mr. Ward's personal dealings with Madison to have had any basis to give him such advice. I don't recall Mr. Ward ever seeking my advice about his personal financial arrangements with anyone, including Madison.

Q Do you recall him indicating any -- let me put it this way.

Mr. Hubbell has said to me at least that Mr. Ward expressed to him, starting in the spring of 1986 what Mr. Hubbell described as a state of anxiety about affairs at Madison and how -- I think he goes into more detail -- but expressing anxiety worrying about whether or not he's going to be paid.

I take it what you're saying, is that didn't come to your attention that Mr. Ward had

anxiety of that sort?

A Mr. Ericson, I don't recall Mr. Ward ever expressing anxiety about anything to me. Mr. Ward's demeanor and dealings with me were always filled with confidence, ~~not anxiety~~, to the best of my recollection, in the years that I had any dealings with him.⁴⁰⁰

Several other facts support Mrs. Clinton's recollections:

First, she may not have known much about the *D'Oench Duhme* doctrine. When asked a blind question about it, she answered by describing an unrelated legal issue.⁴⁰¹

Second, the theory that Ward or McDougal wanted to have the Rose Law Firm document the terms that (arguably) make Ward a straw man is hard to reconcile with the fact that in other respects McDougal and Ward seem to have resorted to self-help rather than advice of counsel. Certainly, the series of loans that they entered into in the spring of 1986 (\$400,000 from Madison Guaranty to Ward; \$300,000 from Ward to Madison Financial; and approximately \$70,000 running in both directions) reflect an unusual approach to documenting Ward's entitlement to commissions. There is no evidence that the Rose Law Firm had a hand in these loans. ~~It is hard to imagine that any~~ competent lawyer could have recommended this course of action.

Finally, even if a trier of fact did find liability, it is doubtful that the option caused any harm. It was never exercised. It did ~~not cover up anything~~, nor did it prevent the FHLBB examiners from roundly criticizing the IDC/Castle Grande project in their 1986 Report of Examination. While it became an issue in *Ward v. Madison*, neither Ward's counsel nor Madison Guaranty's counsel thinks it was very important to the result, and a review of the trial transcript leads to the same conclusion. For all these reasons, the May 1, 1986 provides no basis for any sort of claim against the Rose Law Firm.

The money received by the Rose Law Firm: The amount of money paid to the Rose Law Firm for its matter 5/IDC/Castle Grande work is not substantial. Work was performed for the money, at least with respect to the liquor and sewage issues, and the initial review of the purchase agreement.

400 Clinton Interview, Feb. 14, 1996, at 103-05.

401 Clinton Interview, Feb. 14, 1996, at 22, 102-05, 107.

As noted, for a time the ~~Rose Law Firm~~ received a \$2,000 a month retainer from Madison Guaranty. The press has suggested that then-Governor Clinton personally solicited this retainer from McDougal and picked up the money monthly.⁴⁰² The suggestion is made that the retainer was paid because the Clintons wanted the money, rather than for services rendered.

This suggestion seems wrong for at least three reasons:

First, the retainer was treated as an advance fee payment for services to be rendered rather than a "true" retainer (a fee paid regardless of whether services are rendered, in effect, a fee for remaining available).⁴⁰³ Consistent with this interpretation, the Rose Law Firm deposited the retainer into a trust account, at least starting in February 1986.⁴⁰⁴ A "true" retainer need not be deposited into a trust account, because it is a payment for being available rather than an advance on services.

Second, services were rendered and, when the representation was nearing an end, the unused portion of the retainer was returned to Madison Guaranty (indeed, perhaps while Madison Guaranty still owed the Rose Law Firm some money for the Babcock and Tulsa Econolodge matters). Thus, the suggestion that the retainer was some sort of gratuity, or was handled improperly, lacks foundation.

Third, as described above, McDougal's Madison Bank had refused to pay the Rose Law Firm in full for litigation services rendered in 1981 and 1982. Given this prior experience with McDougal, the Rose Law Firm could hardly be blamed for seeking advance payment before agreeing to represent a McDougal entity once again.

Missing documents: The Rose Law Firm did not have a centralized system of opening or maintaining files; instead, matters were left to the

402 *Los Angeles Times*, Nov. 14, 1983. Cf. Strayhorn Interview at 45; Davidson Notes of Raglin Interview, May 11, 1994. The President states that he did not pick up the money. Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 17(f), at 32.

403 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(d), at 34-35 ("I don't recall who negotiated the 'retainer arrangement' (this was in fact simply a prepayment of fees and expenses, with any excess to be refunded to the client)."). This distinction is explained in Charles W. Wolfram, *Modern Legal Ethics* § 9.2.2, at 505-06 (1986).

404 RLF2 02995-96.

discretion of individual lawyers.⁴⁰⁶ The "bright line" approach taken to the statute of limitations in Arkansas has made long-term document retention by law firms less customary than might be true elsewhere. In Arkansas, as in some other states, the courts have been reluctant to develop exceptions to the statutes of limitations. While in some states (e.g., California), various tolling doctrines make it exceedingly difficult to render advice on how long one must keep documents, in Arkansas this is not true. As recently as 1991, the Arkansas Supreme Court, in a legal malpractice case, refused to adopt a variety of tolling doctrines, stating as follows:

There is yet another significant reason we do not retroactively adopt the "discovery rule," "date of injury rule," or "termination of employment rule." Many abstractors, accountants, architects, attorneys, and other similar professionals surely have relied on our traditional and long-standing rule. In doing so, they had no reason to keep records for longer than three (3) years. As a consequence, if we retroactively changed the rule, they might easily have no materials to use in their defense.⁴⁰⁶

The new evidence shows that the Castle Grande files were discarded in 1988, long before Whitewater in any form became an issue. The discarding occurred in a seemingly innocent context, as part of a general effort to discard unneeded files.⁴⁰⁷ There is no evidence that Mrs. Clinton knew anyone might need the files. The Ward case was then going to trial and she had a file labeled "Ward Option" but she says she does not recall being aware of the case, much less knowing that the option was at issue.⁴⁰⁸

405 Thomas Interview, Dec. 19, 1995, at 30-31; Hubbell interview, Dec. 27, 1995, at 41:16-43:20.

406 *Chapman v. Alexander*, 307 Ark. 87, 817 S.W.2d 425, 427 (1991). Of course, nothing in this opinion, or elsewhere, would justify spoliation of evidence, should that be proved. The only point being made here is that discarding files before investigations began and subpoenas were issued might be justifiable. Therefore, without more, the non-existence of certain files today is not proof of actionable wrongdoing.

407 Supplemental Interrogatory Responses of Hillary Rodham Clinton, Jan. 20, 1996, answer to Interrogatory No. 68, at 14-15, and tab A thereto. Compare RIC 000007G through RIC 000007I, produced under cover of a letter from Alden L. Atkins to Bruce A. Ericson dated Feb. 3, 1996. The handwriting on RIC 000007G, indicating that files should be discarded, is not the same as the handwriting on the document behind tab A, which is otherwise identical. Mrs. Clinton thinks a staff person must have copied her directions onto another copy of the original memorandum. Clinton Interview, Feb. 14, 1996, at 99-101.

408 Clinton Interview, Feb. 14, 1996, at 101.

The worse that might be said is that Mrs. Clinton should have checked with her client before discarding files that belonged to it.⁴⁰⁹ If she did not do so, that arguably was an error on her part, but it is one thing to deem it an error and quite another thing to deem it spoliation. Besides, in Arkansas there is no general duty, in the absence of ongoing proceedings, to preserve evidence.⁴¹⁰

Conspiracy theories: Of course, one might reject all this and argue that the documents were destroyed in 1988 for a nefarious reason and that all the witnesses have testified untruthfully. Such an argument, however, would be highly unlikely to persuade any trier of fact.

It simply would not be persuasive to argue that, for \$21,000, McDougal corrupted the Rose Law Firm and convinced half a dozen lawyers, most of whom he did not know, to join him in a scheme to violate the law. Odd as he might seem, McDougal did not involve large groups of strangers in his schemes. Instead, McDougal typically involved a close group of long-time friends and trusted associates in his plans, and nobody else. And typically it was the same people, over and over, friends and vassals who dated back to McDougal's youth.

Rather than find a conspiracy here, a trier of fact presented with all the evidence is far more likely to end up thinking something like this:

The Clintons (like Senator Fulbright) were not old cronies, like R.D. Randolph, instead, they fell into a different group. They were not confidantes but people who McDougal wanted to claim as friends. Sitting on the periphery of politics, McDougal wanted to be known as someone who had friends in high places. In the Clintons' case, he wanted to say something like this: 'They are friends of mine. We go way back. They have invested with me. I worked for the Governor. His wife is my lawyer.'

In all probability, after Massey sought to obtain legal work from Latham, Latham raised the issue with McDougal, and McDougal thought something like this: 'What a good idea. I already have Jim Guy Tucker in my stable of lawyers. Why not add the First Lady as well? I will send her some fairly prosaic assignments and see how she does. Meanwhile, it certainly won't hurt to let people know the Governor's wife represents me.'

In contrast to this, the conspiracy theory is hopelessly flawed. The Independent Counsel already has alleged a different conspiracy—the conspiracy

⁴⁰⁹ See Clinton Interview, Feb. 14, 1996, at 97-102.

⁴¹⁰ *Wilson v. Beloit Corp.*, 921 F.2d 765 (8th Cir. 1990), *affirming*, 725 F. Supp. 1056 (W.D. Ark. 1989).

with Tucker—involving the same property, IDC/Castle Grande. Without prejudging the results of that forthcoming trial, let us grant that the conspiracy alleged in the indictment does not violate common sense. The principals were cut in on the deals, and relatively large amounts of money changed hands (six figures, it is alleged). Whatever one thinks of that, however, it strains common sense to place a second set of conspirators on the same property—a set that included half a dozen lawyers who had never met McDougal before, a set that was not cut in on the deals, a set whose senior members stood to gain something on the order of \$20 a month.

Summary: The only solid evidence tying the Rose Law Firm to the IDC/Castle Grande acquisition is evidence of the innocent activity of participating in the drafting of the purchase agreement. While some evidence suggests that Hubbell could have had a role in the drafting of the September 24, 1985 letter, Hubbell denies it, as does Ward, and nothing proves Hubbell drafted the letter, much less that he did so knowing it to be wrong. Similarly, while Mrs. Clinton drafted the May 1, 1986 option, nothing proves she did so knowing it to be wrong, the circumstances of the work point strongly toward innocent explanations, and the theories that tie this option to wrongdoing or to the straw-man arrangements are strained at best.

IV. CONCLUSION.

The evidence taken as a whole does not amount to convincing proof that the Rose Law Firm knowingly aided and abetted a fraud, or a scheme to circumvent the Arkansas investment limitation regulation. This conclusion does not necessarily mean that the evidence exonerates anyone; it simply means, given the applicable legal standards and the statutory mandate under which the FDIC operates, that no reasonable basis has been found to recommend the filing of a claim relating to IDC/Castle Grande against the Rose Law Firm.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION

WEDNESDAY, JUNE 5, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:26 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. I apologize for getting started late, but the Members have been meeting. The Committee is going to discuss the possibility of examining Mr. Hale, which is of great importance and the manner in which that is done.

Let me say that it was a bipartisan effort of this Committee, the Minority joining the Majority, that has attempted to bring Mr. Hale in. We sought by way of subpoena to examine him, to depose him, and then have the opportunity to hear his testimony. We encountered resistance by the Special Prosecutor because of the pending trial in Little Rock. After the trial, we once again joined in an effort to bring Mr. Hale before the Committee. First, to depose him; and then, to examine him publicly.

We were responded to by his lawyer, Mr. Olson, in a May 23rd letter, that we have made available, in which he indicates that Mr. Hale respectfully declined to appear before the Committee for a deposition or public testimony. He goes on to say:

Mr. Hale has been explicitly threatened, in writing, with prosecution in Arkansas by Arkansas State authorities. There are ample bases for believing that such threats and any such prosecution would constitute retribution against Mr. Hale for his cooperation with the Independent Counsel. He has been advised that any testimony that he may give before the Committee may be used against him by Arkansas prosecutors in such future proceedings. Under the circumstances, Mr. Hale feels that he has no choice but to avail himself to the protection afforded to him by the Constitution.

Mr. Hale's attorney advised the Committee that he would not come in without getting protection from self-incrimination. The Committee reached out to Judge Starr, wrote to him on May 30th,

asking whether or not he would be opposed to our request for what we call "use immunity," a limited immunity, which means Hale could no longer successfully raise the threat against incrimination and raise the Fifth Amendment as a defense against testifying.

It would provide him with limited-use immunity, which means that any testimony he gave could not be used against him. It would not, in any way, permit him an early exit from prison nor would it permit any crimes that he committed from being prosecuted and pursued. If, indeed, evidence has been gathered and a prosecution may be undertaken in the State of Arkansas or any other place against Mr. Hale for actions that he has undertaken, he can still be prosecuted and his testimony before this Committee is the only thing that could not be used against him.

We were mindful of not having a repeat of some of the problems that have taken place in the past. That is why we went to extraordinary lengths in accommodating the legitimate concerns of the Special Counsel.

That was an understanding the entire Senate reached and understood in enabling legislation that authorized the Whitewater Committee to undertake its work. We are now here today for the purposes of considering enacting a Resolution which would give us the ability to grant limited-use immunity to Mr. Hale.

I want to announce that a quorum has been established. I know that there are various questions that my colleagues have and want to raise with respect to this matter.

This is a serious matter. It's a question of having an opportunity to hear, admittedly, an important witness and to judge his veracity and credibility, both by the Committee and the American people.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, this requires some very careful analysis and discussion. I believe that Mr. Hale is seeking to abuse the Committee by this proposition his counsel has put forth for what really amounts to blanket-use immunity.

Once Hale comes in, if he's given immunity, anything he says at the witness table, even if not responsive to a question put to him, he gains immunity for it. Mr. Hale is a bad actor and that is being charitable in the description of him in terms of the practices he has engaged in and the abuses he has committed.

He apparently remains subject in Arkansas to prosecutions—the one we know about apparently that has been put forward is the abuse of the burial insurance scheme in which poor people put money aside for burial insurance. They were ripped off in the scam. That's the allegation with respect to Mr. Hale's conduct.

Why should he be able to come into the Committee and obtain immunity that offers the opportunity to, in effect, shield himself from accounting for those activities is beyond me. I don't think that should happen.

It seems to me some thought should be given to bringing him in here without immunity and getting his testimony with the possibility of finding some way that he will not be questioned on that particular area. Then he couldn't abuse the Committee by moving into

that area and by doing so gaining immunity for himself, which I think is a very real danger, given the kind of person he is.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Please, would the Senator yield just for a second on that point?

Senator SARBANES. Certainly.

Senator HATCH. It's my understanding that nobody is going to go into that. I mean, these certain——

Senator SARBANES. Hale can voluntarily——

Senator HATCH. This is going to be limited just to——

Senator SARBANES. Let me say to the Senator, you run the risk that Mr. Hale will simply volunteer it in the course of his answers. Once he lays it on the record, he gets immunity.

Senator HATCH. They can prove that case without his testimony.

Senator SARBANES. Pardon?

Senator HATCH. They can prove that case against him from what those facts are whether he testifies or not.

Senator SARBANES. I don't know that that's the case. But I don't think Hale ought to be able to take a question from you and then just completely move in another direction and lay out an answer and obtain immunity for the material——

Senator HATCH. The Chairman is going to stop him.

Senator SARBANES. —he could put on the record. I really don't think that ought to happen.

The CHAIRMAN. I think that the Senator should be permitted to do everything possible to cut off any line of testimony as it related to that area, recognizing two things. First, that it was outside of the scope of what we are inquiring into; and second, we would not give him an opportunity to act and use this Committee as a shield from criminal prosecution. We will not permit that line of testimony. I mean, that would be my intent. I would hope the Committee would join in with me.

Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Mr. Chairman, isn't there an easier way to go? Rather than to let him control the Committee, why don't we all agree that we will not ask any question relevant to this National Savings matter under which he faces potential prosecution; we all agree, and you have the ability to rule us out of order?

The CHAIRMAN. Absolutely.

Senator BRYAN. So under those circumstances, why should he be granted immunity? His concern is the prosecution at the State level. I understand that.

The CHAIRMAN. Well, let me say this to you: Again, we have, in an effort to pursue this, reconfirmed yesterday, and his lawyers have indicated quite clearly that he would not waive immunity.

There may be something that none of us are aware of. I am not speaking on behalf of David Hale, but every citizen who obviously has broken the law, been convicted, and is in prison for lots of misdeeds, there is no way to get him to waive that which is a limited use, which says any testimony he gives can't be used against him.

Senator BRYAN. My concern is that Mr. Hale and his lawyers are very cleverly trying to manipulate this Committee. That is to say, if he blurts out something in the course of a question, even though it is unresponsive to the question, he then has expanded his own immunity.

Senator KERRY. He would even be immune as to the perjury that he might commit here.

Senator BRYAN. For example, if he says, "And by the way, I also have to tell you that I have perpetrated fraud against a couple of other Federal institutions." He, thereby, secures immunity by expanding his response. I mean, that's a great risk, it seems to me, for this Committee to take; whereas, the simple course of action is you simply rule us out of order if we ask any questions that relates to the National Savings case, which is the case that he ostensibly is concerned about that is subject to the local prosecution.

That seems to me a reasonable approach.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Yes, Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, I would like to ask Mr. Chertoff, what are we really asking for and what is the scope, and what are Mr. Hale's options, if he would comment on that? As a former prosecutor and U.S. Attorney, he understands all that.

Mr. CHERTOFF. To answer the question, Mr. Chairman, there is nothing that Mr. Hale could do, in answering your question, that would give him immunity from prosecution based on any evidence that has been gathered by the State prosecutor in Arkansas. Whatever the State prosecutor has in his hopper now is, and will always be, available to the State prosecutor in order to make his case.

All that use immunity does is say that anything that is said here cannot be used to build a case. Therefore, even if he were able to blurt something out before the Chairman cut him off, all that would mean is that the prosecutor in Arkansas could not use what was blurted out in making the case. It would not undo or erase any evidence that the prosecutor can independently develop.

Senator KERRY. Mr. Chairman, with all due respect to the——

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Kerry, if you would wait for just a moment I will come to you.

Senator Shelby.

Senator SHELBY. I would like to follow up and ask Mr. Chertoff this question: During the Watergate proceedings, how was immunity granted and used, if it was?

Mr. CHERTOFF. Well, I think in Watergate, as well as in a number of other proceedings, use immunity, was given out to witnesses. I think over the past years, over 300 witnesses have been granted use immunity by the Senate.

Even since Oliver North testified, I think that there have been approximately a dozen. Mr. Chairman, I would say that this is different than the *North* case for the following reasons:

First, the prosecutor in the *Oliver North* case objected to the granting of use immunity. Here, of course, the prosecutor and the Independent Counsel, who was the only prosecutor that the Resolu-

tion requires the Committee to be concerned about, has said that this will not affect the prosecution. In fact, Mr. Hale has already been convicted and is serving his sentence.

Second, what we are proposing to deal with here with questions is not the subject matter of the State prosecution. So there is really no risk that the kind of taint problem that arose in the *North* case could arise with respect to the separate State case.

This individual, as with the case of others who have told the Committee they would plead the Fifth, such as Mr. Wade, who was the real estate broker for Whitewater, has an absolute right under the Supreme Court rule to assert his Fifth Amendment right with respect to any question, even if, on its face, it's an innocent question that might in any way, shape or form be a piece of evidence that could be used in a prosecution. Therefore, in terms of the ability of the Committee to require his testimony, it is essentially up to the witness.

Mr. Hale's lawyer, as late as yesterday, told the Counsel on both sides that he was greatly concerned about the whole area of examination in terms of his Fifth Amendment right.

Senator SHELBY. Since the *Oliver North* case, I understand the Senate has granted immunity 12 times, in other words, 12 witnesses, since then; is that correct?

Mr. CHERTOFF. That's correct.

Senator SHELBY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Chairman, there are a couple of questions that come up. I tend to share Senator Bryan's view, that there is a sense of abuse of the Committee here for the following reasons.

First, let me comment on the *Oliver North* situation. What the court has said, and I think most people have come to the conclusion, is that the *North* case has raised sufficient doubt about granting immunity. No one can predict with certainty what is going to come out in the course of testimony or how that statement here, or evidence elsewhere, is going to cloud or impact the perceptions of another case.

It is an absolute certainty, that the course of justice in the case will be affected by his appearance here with immunity, because no lawyer worth his salt is not going to file an appeal based on the claim that, in fact, the entire prosecution was tainted. So you have, to a certainty, the fact that you are going to tie up the court process, the legal system with the assertion of that complaint.

Second, we can predict that there will be a convoluted set of arguments. The ability of any jury or any judge to draw, the conclusion that, in fact, what he says here somehow has an impact on some evidence in the State trial conceivably.

Now that's one point.

The second point is that the State trial involves ripping-off African-Americans in an insurance scheme for funerals. There is a legitimate question here whether we ought to, in any way, provide any leverage against his ability to be prosecuted for that when we have a very simple solution provided by Senator Bryan, which is that we all agree we are not going into that area.

If you do not go into that area, then the entire question of a tainting doesn't have to be broached because this man has already testified for 9 days in a court of law without immunity. By what rights should he go to the Arkansas Court, cut a deal and agree to talk in court, get a lesser sentence and now come up to the Senate and bamboozle the Committee by coming in here and saying absolutely anything he wants whatsoever with the notion that for whatever he says here he can never be prosecuted?

We would be inviting the possibility of any kind of broad condemnation that has no basis whatsoever when he has already gone to court, testified in front of a jury, and been judged guilty. Why should we not act exactly as that court did and say, "You were willing to testify before the court. Now come and tell the country the very same things you told the court."

Senator BOXER. Mr. Chairman.

The CHAIRMAN. Do you want an answer to that?

Senator KERRY. Yes.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. The answer is that his attorney has indicated that he is not going to waive his right. We have to now consider whether or not we want to take his testimony.

As it relates to the question of the insurance company fraud that he may be involved in and may be charged in, particularly if this Committee agrees that we will not raise any issues, I think that becomes academic. We are not immunizing him from any crimes.

Last, but not least is, if he lies before this Committee, he is subject to a charge of perjury, and, we will pursue that. He has to understand this is not a "get out of jail free card." This is not saying that for any crime that he may or may not have committed that he now has absolution. This is a very narrowly defined immunity. We have no other recourse if we want to hear from him but to grant this limited-use immunity.

Senator BOXER. Mr. Chairman.

Senator SARBANES. Well, Mr. Chairman.

Senator KERRY. Mr. Chairman, the only subject that he faces the Fifth Amendment issue on is the insurance issue. If we agree not to ask him a question about it, there is no Fifth Amendment issue and you do not have to grant immunity.

The CHAIRMAN. What you are saying is that, from our perspective, why would he be doing this. I do not know what he may be concerned about testifying to, that could be used against him. Obviously, this is a right that his attorney has indicated, as recently as yesterday, he is going to pursue. So we have to make a judgment.

Senator SARBANES. Mr. Chairman, our concern is, given what Senator Bryan and Senator Kerry have said, that he's out to abuse the Committee in terms of the use of this process. In other words, if we take out the burial insurance, why would he need immunity? His insistence upon obtaining immunity leads one to the question or the suspicion that it is to accomplish a purpose that ought not to be accomplished and to use this Committee. I want the Chairman to know that we have really worked hard at this and given it a lot of serious thought, because we have consistently all along said that he ought to come in and be heard from.

The question here really is this assertion on their part that they have to get immunity in order to do that. I am going to ask Mr. Ben-Veniste just briefly to give us the benefit of some analysis that he has made. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you.

As Senator Sarbanes has pointed out, we have consistently been trying to bring Hale before this Committee. We have correspondence between the Majority and Minority about this subject, where back in November and December we started to request that Hale be subpoenaed. No subpoena was forthcoming, so naturally, he didn't appear. Then we come to the extension of time for this Committee's work and a subpoena is issued for Hale. This occurs after the trial where he has now testified for 9 days under a plea bargain agreement with the Independent Counsel's Office but without any blanket-use immunity.

In response to our subpoena to appear for deposition, he asserted a Fifth Amendment privilege and in the letter of that assertion raised the specter of Arkansas prosecution. With the Chairman's and the Ranking Member's blessing, we had a meeting with Mr. Hale's lawyer to try to flesh out what it was that he was principally concerned about. The only specific thing that he mentioned that he was concerned about was the prosecution that is contemplated against him in Arkansas State Court. I wish to emphasize that this is only an allegation, but we need to discuss it so we have what's on the table before us.

In that matter, the allegation is that in 1993 Mr. Hale committed a fraud with respect to a company called National Insurance, which was a burial insurance company, taking money from lower-income persons, as little as \$1 a month to insure that they would be buried upon their death as opposed to being put in a Potter's Field somewhere in an unmarked grave. It appears, on the basis of the news reports relating to that allegation, that some \$150,000 was removed from that company, which was controlled by Mr. Hale.

In a surprise audit, the State insurance inspectors came in and looked at the books of the company and saw that this money had been removed. They demanded that Mr. Hale repay the money. A check was forthcoming in the amount of \$150,000 and put back into the company. That information was provided to the insurance regulators. It was immediately removed after the documentation was provided to the insurance regulators. The company was taken over by the State. It collapsed and was in receivership.

Now it gets a little more complicated, because the company was apparently purchased by Mr. Hale with the proceeds of the CMS fraud, the company that he had run and which was the subject of the trial in Little Rock, had generated profits to him. Among those profits was money which was used by Hale and, again, allegedly to purchase this company.

So that is the area that he has specific concern about and the only area that he has specific concern. But, the request that he has made is for blanket-use immunity. He has indicated he will not give anything other than name, rank, and serial number without blanket-use immunity.

The issue before us, as I see it, is having testified for 9 days in Little Rock, what has changed to require a grant of immunity from

this Committee which, as has been stated here, could pose a problem to the successful prosecution by State authorities? The issue of whether the Independent Counsel doesn't have a problem with our granting immunity doesn't really address the question of the State prosecution. That is not the Independent Counsel's prosecution that is a State of Arkansas prosecution.

This immunity that we are discussing is the same exact immunity that was given to Ollie North, John Poindexter, and others. In that regard, the law has evolved somewhat from the days of Watergate. I was very familiar with the problems that were associated with the grants of immunity in Watergate. At that time, the law was that if you segregate your evidence in advance of a grant of immunity, you were pretty much assured that you could use that segregated evidence in a trial of the individual who was given us immunity.

The *North* case changed that. The burden was then placed on the prosecution. This case would place the burden on the prosecutor in Little Rock, who is not a part of these proceedings. The law would require that he prove that nothing that came out of this hearing if it were the subject of a use immunity granted to David Hale or a blanket basis, that nothing directly or indirectly came to his attention, went through his mind, was used in any way, shape or form in connection with that prosecution.

That is a stunningly different test than the *Castaguard* test that was in place during Watergate and a much more difficult case as is reflected in the *North* decision where it was impossible for the prosecution to meet that burden, even though they had segregated their evidence themselves. So what we are faced with, really on a common sense basis, is whether there is some benefit that is being sought here by Mr. Hale that this Committee will confer on him that will interfere with prosecutions that are projected against him in the State of Arkansas.

From a very practical standpoint, one would have to ask why after 9 days of testimony on the stand without a blanket-use immunity, he would now need it from us. I think, in analyzing Senator Bryan's proposal and listening to Senator Kerry, I'm struck by the fact that this is a very common sense way of going forward. The protection is not diminished by Mr. Hale asserting a Fifth Amendment privilege or letting us know he would assert a Fifth Amendment privilege to areas of legitimate concern. Then we wouldn't get into them. That is a self-regulating way of going forward.

Senator BOXER. Mr. Ben-Veniste, would you yield to me, through the Chair, to just ask one question of counsel here?

That is: Would it not be fair to say that Mr. Hale wants a special deal that no other witness that came before us ever got before? In other words, he's getting immunity. Neither this Majority or Minority has ever granted that to any other witness.

We have clear evidence that there is a prosecution pending against this man. Would it not be fair to say that under the plan proposed by Senator Bryan, we get everything we want? We get Mr. Hale here with a promise by us that we won't ask him about his ripping-off poor people in a burial scheme, and he comes forward. Also, is it not true that we never granted immunity to any other witness?

Mr. BEN-VENISTE. We did not grant immunity in the 14 months that I've been involved with this Committee. However, let me make one correction, if I may in what you said.

Senator BOXER. Please.

Mr. BEN-VENISTE. In fairness to Mr. Hale, he has not been indicted on the charges we are talking about relating to the burial insurance company. We are operating on the basis of news reports that indicate that there was an emissary sent to the local prosecutor from the Independent Counsel arguing that Hale should not be prosecuted. They did not accept that point. And they had indicated that they would defer indicting Mr. Hale until after the conclusion of the McDougal/Tucker trial.

It is our understanding that the statute of limitations in bringing such charges would expire at some point in July.

Senator SARBANES. If Hale appeared without—

The CHAIRMAN. Might I make an observation?

Senator SARBANES. Certainly.

The CHAIRMAN. The fact of the matter is that the Fifth Amendment has been asserted. This is the only witness that we have thought that we would consider granting immunity so that we could hear from him for obvious reasons.

It has been asserted by Chris and Rosalie Wade. We should consider whether to grant them immunity and get them in to testify. Jim and Susan McDougal. For obvious reasons, we weren't going to look to immunize them, particularly before the trial.

Senator BOXER. You granted them immunity? No.

Senator FAIRCLOTH. Mr. Chairman.

The CHAIRMAN. The reason we have not been able to hear their testimony or to get documents is because they have asserted the right against self-incrimination. The question is: Do we believe that it is important for the American people and for this Committee to get at the truth, as best we can, from Mr. Hale. If we believe it is, then we grant him limited immunity against prosecution for anything that he testifies to, that it cannot be used against him, just his testimony. Obviously if he perjures himself, or has committed other crimes, that immunity does not keep him from being prosecuted.

Senator KERRY. Mr. Chairman, may I ask a question?

Senator FAIRCLOTH. Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. We are talking about this indictment and possible indictment, the prosecution of Hale, as if it were some clean, high, above-board indictment. The man, Stoddal, that's talking about indicting him, is running for Congress. I mean, he is not after Hale. He is trying to get elected. Let me read to you an article from The Wall Street Journal this morning. It says:

If elected, Mr. Stoddal will become the de facto head of a diminished but still dangerous political machine in Arkansas. A long-time Clinton ally, Mr. Stoddal last week signaled that he is still willing to play bully boy for the power elite when he restated his intention to use his prosecutorial power to bring State insurance fraud charges against key Whitewater witness, David Hale. The message in any such Hale prosecution would be that new Whitewater witnesses are on notice that the State still has the power to punish them.

I mean, we are talking about this man—we talk about common sense. Common sense is, he's trying to get elected to Congress and he will use David Hale or any other method he can to get elected. So let's be realistic about who the prosecutor, the district attorney, is that's talking about prosecuting him.

Senator KERRY. Can the Senator tell us what Mr. Starr is running for?

[Laughter.]

Senator FAIRCLOTH. As far as I know, Mr. Starr is not running for Congress unless he announced it recently.

Senator MACK. Mr. Chairman.

The CHAIRMAN. Senator Mack.

Senator DOMENICI. Thus far, he has been right, incidentally.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Yes, just one short comment at this point, because I have a feeling this is going to go on for some time. There is one minor flaw in the plan that my good friend, Senator Bryan, has proposed to us this morning. That is, if we accept his plan, we don't hear the testimony from Mr. Hale.

Senator SARBANES. Well, you don't know that.

Senator BRYAN. If I might be permitted—

Senator SARBANES. I mean, Hale ought to be put to it. If we indicate that we won't ask Hale about the burial insurance measure, Hale retains his ability to take the Fifth Amendment, so we are trying to protect him to begin with. He has his ultimate protection, in any event, because he insists upon immunity in order to come before the Committee.

If there is not in prospect the abuse of the immunity grant in order to gain protection from some prosecution to which he ought to be subjected.

Senator KERRY. Well, Mr. Chairman, if I could add to that—

Senator MACK. Mr. Chairman.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Senator Kerry, I will come back to you.

Senator Mack.

Senator MACK. The bottom line is that Hale understands that there is no way he can be brought before this Committee. Whether we like it or not, he is in control of what the circumstances are for his testimony before this Committee.

Senator KERRY. Mr. Chairman, I want to address that.

If we were to put a subpoena out and ask him to come here and he comes here, we are certainly permitted to ask him questions.

First, we ask him his name, where he comes from, and then what he does. He can only assert his Fifth Amendment privilege as to a question where he can raise that, because that's going to then be tested as to whether or not he has Fifth Amendment privilege as to that question.

If we are not going to raise any questions where he has a remaining legitimate right, there is not going to be an assertable Fifth Amendment privilege. This is the main point here.

My colleagues on the other side are hungry for this testimony, and so we are happy to have this testimony. We would like to have

Mr. Hale invited to come here and testify. He has already spent 9 days in a court testifying under oath, and been subjected to cross-examination. That testimony is already in our record.

There is no great mystery about what he is going to say except what he might say if he had a blanket-use immunity, under which he can say anything. The question here is if we are legitimate, let's invite him. Let's have him come up here. If he has no assertable Fifth Amendment privilege, let's put that to the test. Let the system work the way it ought to work. But let the Committee not be bamboozled and bullied by a legal scheme into giving an immunity that we don't need to give.

Let us proceed to have his testimony. It seems to me that otherwise the Committee is just playing into the hands of a lawyer who has already put his client on the stand in a court of law. Everyone of you has read his testimony. This is just a question of how many cameras we can get and get everybody to listen to it again.

So we can do that again. If Hale is the good citizen who wants to come here and be honest all of a sudden, what is to prevent him from coming here and telling us what he already told the court of law? Nothing. Nothing unless we play into his hands and give them what his lawyer is scheming for, some opportunity for an appeal, or to obscure the record. We should not play into that game.

Senator DOMENICI. Mr. Chairman.

Senator MACK. Mr. Chairman.

OPENING COMMENTS OF SENATOR PETE V. DOMENICI

Senator DOMENICI. Could I just take 2 minutes? Frankly, I am kind of amazed at what I am hearing. I have before me a letter——

Senator BOXER. We can't hear you, Pete.

Senator DOMENICI. I said——

Senator BRYAN. Your mike isn't working.

Senator DOMENICI. Excuse me. It's not on?

Senator BOXER. Now, I can hear you.

Senator SARBANES. It's all right now.

Senator DOMENICI. I am really kind of amazed at what I am hearing. I have before me a letter, dated May 23, 1996, from the counsel who represents this witness. In it, he says:

This is to inform you that based on the rights guaranteed to him under the Fifth Amendment, Mr. Hale declines to appear before you for a deposition or for public testimony.

The important sentence that causes me to be rather concerned about all of this is:

As you may know, Mr. Hale has been explicitly threatened, in writing, with prosecution in Arkansas by Arkansas State authorities. There are ample bases for believing that such threats and any such prosecution would constitute retribution against Mr. Hale for his cooperation with the Independent Counsel. He has been advised that any testimony that he may give before the Special Committee may be used against him by Arkansas prosecutors in future proceedings in Arkansas.

It seems to me that we have too many people complaining too much about what a bad fellow this guy is. It seems to me that you all are saying, on that side, "Nobody ought to believe this guy. You know, he's a felon."

Somehow or another, the prosecution in Arkansas seems to be saying, "You dare testify. We will sock it to you. We are waiting here in the wings to put it around your neck."

Now what is all the fuss about? Why don't we hear from him under this immunity? The immunity means nothing. You all know that. We have done 300 of them under this statute already. It seems to me that, on the one hand, you seem to be saying, "We want to hear from him. Since you Republicans want to hear from him, we would just love to hear from him." You are saying that on your side. Well, why are you preventing him from testifying, then?

Senator BOXER. We are not.

Senator DOMENICI. What's the issue?

Senator BOXER. We are not.

Senator DOMENICI. You are preventing him.

Senator BOXER. No.

Senator DOMENICI. You know that time is about to run out.

Senator BOXER. Let me correct—

Senator BRYAN. Mr. Chairman, could I respond?

The CHAIRMAN. Let the Senator—that's a rhetorical question.

[Laughter.]

We will get back to Senator Domenici.

Senator DOMENICI. Thank you very much, Mr. Chairman. I have nothing further to say.

The CHAIRMAN. I have to make an observation because what we are doing is an exercise that will not change anybody's mind that has been predetermined. Everybody has to vote his or her conscience and take their steps accordingly. We all are accountable. Maybe I am being judgmental, and if so, I apologize.

It appears to me that my colleagues on the Democratic side are going to take the position that somehow we are conferring some special right on this individual. We are not conferring any special right. He has an absolute right, as anybody else, to raise his Constitutional right against self-incrimination.

Senator KERRY. Then why didn't he do it in court?

Senator DOMENICI. Senator, that doesn't have a thing to do with it. You know, as a prosecutor, he entered into a plea bargain agreement that if he cooperated, if he testified—

Senator KERRY. And he did.

Senator DOMENICI. And he did.

Senator KERRY. And he got a deal.

Senator DOMENICI. We can't force him to come in.

Senator KERRY. But he has no further liability as to what—

Senator DOMENICI. Now, we have—

Senator KERRY—he will testify about.

Senator DOMENICI. Now wait. I would love to get him in here without conferring any kind of immunity and hear from him.

I would like to get Mr. Wade, the real estate agent, who paid off the Whitewater debt, who was in bankruptcy, and I don't know where he got the money. I would love to hear from him. Do you want to grant him immunity? I will grant him immunity. How about that? How about we consider him and we will schedule a hearing for tomorrow to consider whether we will bring Chris Wade in here? I would vote to confer immunity on him just like this fellow. I mean, the American people have a right to hear this.

Now the fact of the matter is, you can say, "Well, he testified in other places without it. He wants it here." That is his right. We can't take that away. We can't change it. Do I wish we could get

him to agree to come in? Yes. Do I wish we could have gotten him to come in sooner? Yes. Do I wish that the Special Counsel would not have indicated his opposition to testifying before the trial? Yes. That's a fact.

If the Committee decides, in its wisdom, that they do not want to hear from him because you feel somehow his testimony will possibly jeopardize the criminal prosecution with respect to this insurance fraud, that is a judgment that you have to make. I do not believe that it should carry the day. You may agree differently. I don't believe it should carry the day, because he will not receive immunity from any criminal wrongdoing that he has participated in. That's clear.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Just simply that you cannot use his testimony here against him.

Senator BRYAN. Mr. Chairman.

The CHAIRMAN. So why should we torture ourselves? We know the way we are going to vote. Let's do it.

Senator BRYAN. Mr. Chairman.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Mr. Chairman, I will be brief. The Senator from New Mexico cited what Mr. Hale's counsel had to say. I think we ought to consider what the Senate Legal Counsel has to say. Mr. Hale has no right to refuse our subpoena. There is no right to a blanket Fifth Amendment. I want to cite as authority for that proposition a statement made by the Senate Legal Counsel in a June 3 memorandum:

Hale's well-founded fear of State prosecution for those alleged crimes, however, does not permit him to assert a blanket Fifth Amendment privilege against appearing before the Special Committee. He may only assert the privilege on a question by question basis before the Committee so that the Committee may evaluate the validity of each claim in the context of the precise question asked. To our knowledge, Hale has not yet articulated a basis for refusing to testify about the topics that are within the scope of the Special Committee's jurisdiction or about which he already testified during the recently concluded Tucker/McDougal trial.

Again, I say, let's subpoena the witness, let's bring him here before us. He retains only the right on a specific ad hoc basis to assert the Fifth Amendment. He does not have a right to assert the Fifth Amendment against appearing here to testify.

The CHAIRMAN. OK.

Senator BRYAN. Then we can see.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Let me make a point. Everybody seems to indicate that at one time or another we wanted Hale to be before this Committee. Now, we are talking about under what terms and conditions. We have to maintain the interest in the bottom line and that is to get him here. To get him here, we can proceed without immunity and he won't come.

Senator BRYAN. Oh, he has to come.

Senator KERRY. Let's subpoena him today and make him come.

Senator MURKOWSKI. If he comes, then the question is—

Senator DODD. He has to come.

Senator KERRY. He has to come.

Senator MURKOWSKI. All right. If he has to come, then he's here. We could begin the questioning. Then the question is how to limit it. And you are not satisfied with the prerogative of the Chairman to disallow any testimony relative to the National Insurance.

Senator KERRY. He will limit it by any legitimate assertion of his Fifth Amendment right. That is the process we could go through. We all know he doesn't have a Fifth Amendment right as to what we want to ask him. So this is a non-issue.

The CHAIRMAN. Now can I just make an observation? It seems to me that we have no right to determine for a witness when he wants to raise, or when his counsel will advise him to raise, his right against self-incrimination. For us to prejudge and to say that he won't do this or he has no right to do this, I mean——

Senator KERRY. Mr. Chairman, that's the legal process. Let him do that, because we all know——

The CHAIRMAN. Will we do that for Mr. Wade as well? We have tried not to make a show of this. Will we do this for Mr. McDougal, who has indicated that he has raised a Fifth Amendment? Do you want to come in here and swear him in at the same time, only to have him take the Fifth Amendment? Do we want to turn this into a real circus?

Senator KERRY. Mr. Chairman.

The CHAIRMAN. I don't think that should be the purpose of this Committee.

Senator KERRY. The point is that there is a huge distinction between them and this witness. The distinction is that this witness has already cut a deal, has already pled guilty, is already in jail, and has already testified in court. The only area of our inquiry purportedly is that area to which he has already testified and has no Fifth Amendment privilege. There is a huge distinction between our arguing about bringing in somebody who really doesn't have a Fifth Amendment privilege and then somebody who does.

Let's bring him in. Let's put him in front of us. He has no legitimate right to take the Fifth Amendment as to anything you guys want to ask him with respect to what he has already testified to. This is not a big issue, and we shouldn't be making it one.

Senator BENNETT. Mr. Chairman.

The CHAIRMAN. Yes, Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Having been unburdened by virtue of the fact that I didn't go to law school, I have some observations here.

[Laughter.]

I am willing to follow the procedure suggested by Senator Bryan and Senator Kerry as the first step, because they are so confident that the witness is going to be completely forthcoming in all these areas and we are not going to have any problems. But I would ask that if we take that first step and we find out they are wrong and the witness does, indeed, start to abuse his right, that we be prepared at that point on the spot to offer him immunity and say, "Well, it turns out you are behaving the way the Republicans predicted you would behave instead of the way the Democrats predicted you would behave."

Senator KERRY. Let me say to my friend——

Senator BENNETT. We will go in that direction.

Just one more comment. We are not talking about an ax murderer or a child abuser.

Senator KERRY. We think we are not.

Senator BENNETT. We are not talking about somebody who——
[Laughter.]

Senator KERRY. We don't know what we may learn.

[Laughter.]

Senator FAIRCLOTH. Does that apply to most of the Arkansas crowd?

Senator BENNETT. Well, I will take Mr. Ben-Veniste's position, which he has held consistently throughout this whole circumstance. He has always corrected everyone who has tried to impugn somebody who has not been convicted with reminding us all that they are innocent until proven guilty. I'm one that he has reminded of that. I've seen him evenhandedly remind people on his side of that. And I will take that position.

Senator SARBANES. Actually he did it this morning.

Senator BENNETT. That's correct.

Mr. BEN-VENISTE. Senator Bennett, you are correct. But in this case, David Hale has been convicted and——

Senator BENNETT. That's the point I'm going to make. He has not been convicted of ripping off the burial insurance people——

Mr. BEN-VENISTE. That's correct.

Senator BENNETT. —which was the point you made this morning.

Mr. BEN-VENISTE. That's still to come.

Senator BENNETT. Here's my point: This is a guy who is in jail, and who has been thoroughly discredited. His career is over.

Senator KERRY. That is a great reason to call him as a witness.

Senator BENNETT. To say, "Well, we are worried that in some way, some conceivable, possible blurring out might in some fashion, nobody can be sure of, damage a case against this man; therefore, we are not going to hear what he has to say." My reaction is that, frankly, I don't care if it damages the case against this man, because his career is over anyway. He is in jail now.

We are not talking about putting an ax murderer back on the street if the prosecution in Arkansas doesn't go forward. We are talking about a man whom both sides have wanted to hear from in a whole series of areas and whom we have not heard from except in a very carefully controlled circumstance of a trial. I think we are being derelict in our duty of trying to get the whole story out if we don't take the opportunity to have him here. And I'm willing to run the risk.

Senator KERRY. Mr. Chairman, could I just say to my friend that none of us are predicting what he is going to come here and do. I'm not predicting he's not going to come here and take the Fifth Amendment. I haven't said that. He may decide to do that. But we have the right to put each of those assertions to the test, is what I'm saying.

Then there's the second question of whether or not it is legitimate under these circumstances to grant him immunity. I think he should know ahead of time that most people here, at least on our side of the fence, for various reasons relating to the nature of what

he has done and to the fact that he has already testified will have a hard time believing that we ought to now give him a leg up on the legal system, given the kind of person that he is.

Senator MURKOWSKI. Yes, but, Mr. Chairman, you will never get the facts out if you don't have him here.

The CHAIRMAN. Let me say this—

Senator MURKOWSKI. The bottom line is we are both interested in the facts. We will never get them unless we find a way to bring that man in.

Senator BRYAN. Senator Murkowski, he has to respond to our subpoena. He has to be here.

Senator MURKOWSKI. Yes, but he can plead the Fifth.

Senator BRYAN. He cannot plead the Fifth on a blanket basis. He has to plead the Fifth with respect to each question. Then the Committee has the power and the ability to determine whether that is a valid exercise.

The CHAIRMAN. That is not quite accurate. Let me say that for approximately 25 to 30 years, we haven't brought a witness to any proceeding that I know of to actively plead the Fifth when his lawyer has advised a committee of the Congress that his client intends to plead the Fifth. We haven't done it.

Senator KERRY. Well, can I—

The CHAIRMAN. That takes us back to McCarthy days. Back then they would bring someone in and he would take the Fifth as it related to his name, his address, et cetera.

Senator KERRY. Mr. Chairman, could I ask you a question?

The CHAIRMAN. There is an opinion which states: Lawyers for Congressional committees summon witnesses who know it is known will decline to answer any questions on the claim of privilege. We have been asked to advise whether it is proper for Congressional committees whose Chairmen, staff, and several Members are attorneys to require a witness who is a target of a pending Grand Jury investigation to appear at a televised hearing to be questioned when the committee has been notified in advance that the witness will exercise his Constitutional privilege not to answer any questions.

At the outset we note that it is unethical. It has been the practice of the Congress for the past 25 to 30 years not to do this when we have been advised that a client will. Let me say to you that if the Committee and my colleagues say they want to do this, I don't feel comfortable.

Senator KERRY. Well, Mr. Chairman, can I—

The CHAIRMAN. The first process is to vote to do this, then go to the Special Counsel to get his formal opinion, and then go to the court. You cannot bring in a person who raises the claim of immunity and then this body decides to grant him immunity.

Senator KERRY. Mr. Chairman, could I say to you advisedly—

Senator SARBANES. Mr. Chairman, in light of that ethics ruling, it's not our intention to ask Hale about the matter of which he is a target, if he is a target, in which he is fearful of prosecution in Arkansas. We have no intention of putting those questions to him and requiring him to invoke the Fifth Amendment publicly in order not to answer those questions. That's not the objective.

On the other matters, Hale should testify. He doesn't really have a valid Fifth Amendment privilege. The fact that he's seeking an immunity leads one to ask why does he want this immunity, since he doesn't need it and since we have no intention about asking questions to which his privilege would apply. If, somehow it happened, he could invoke his privilege at the time. But I don't think it would happen. Once again, we are back to the fact that I think Hale is seeking an opportunity to manipulate the Committee to his advantage.

Senator KERRY. Mr. Chairman, it is my understanding that this wouldn't happen in public, because I understand he was going to be deposed. If that is true, it would be a private session. That is where these could be asserted. On a quick process to the court, the court will determine very rapidly if he has a legitimate right to any Fifth Amendment privilege on any of the questions asked. And he could appear here very rapidly with a court determination that he doesn't.

The CHAIRMAN. Let me say that maybe we have made some progress. Are my colleagues on the Democratic side suggesting that we vote out the subpoenas, bring in Mr. Hale for depositions, and ascertain what his position will be?

If, indeed, he asserts his right to the Fifth Amendment, then will it be your position that in order to get him to testify that we apply to the Special Counsel and the court for an order to immunize him from prosecution against—

Senator KERRY. No, sir.

Senator BOXER. No.

The CHAIRMAN. What is your position then?

Senator SARBANES. No. That's an invitation for Hale to improperly assert the Fifth Amendment in order to get the immunity.

The CHAIRMAN. What is your position then?

Senator KERRY. Mr. Chairman, the position is that we go through the standard procedure of the Senate. I believe we would have to take a vote in order to have Senate Legal Counsel represent us before the court. There would be an expedited hearing that could be arranged on the subject of whether or not he has a right to assert the Fifth Amendment privilege with respect to the issues we intend to raise with him. The court will make a determination and either assert he has the Fifth Amendment privilege or order him to testify. At that point he could testify here without our ever giving him immunity or creating a whole new legal avenue for him.

The CHAIRMAN. What year would this finally be decided?

Senator KERRY. This could be done on an expedited procedure.

The CHAIRMAN. Senator, let me say this to you, I believe that we will be talking about 1998. And it is not the intent of the Chairman of this Committee to attempt to extend the timeframe by which we said we were going to conclude.

Senator MURKOWSKI. You might ask the Democrats if they would agree to extend the time commitment of this Committee, then, after June 14th if it became necessary.

Senator KERRY. This can be done on an expedited procedure.

Senator MURKOWSKI. Well, not before June 14th.

The CHAIRMAN. Senator Simon, you have been very patient.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. I believe we are going to come down to one question. Should this Committee give a special reward to a convicted felon because his testimony is that valuable? I would like to see him testify. But frankly, I am very reluctant to start handing out special benefits to convicted felons. I do not think that makes very good sense.

Senator MACK. Mr. Chairman.

The CHAIRMAN. Yes, Senator Mack.

Senator MACK. Could I ask Counsel whether, in fact, he believes that this is a special reward?

Senator BOXER. Which Counsel?

[Laughter.]

Senator MACK. I think my colleagues know which individual I was addressing that to.

Senator FAIRCLOTH. Mr. Chairman.

Mr. CHERTOFF. Mr. Chairman.

The CHAIRMAN. Well, let him answer.

Mr. CHERTOFF. Let me answer the question. This limited immunity—there is no such thing, to my knowledge, as blanket-limited immunity; it is limited-use immunity—is the only way that you could require a witness who wants to exercise his Constitutional Fifth Amendment right that he has, the same as every other citizen, the only way you can force that person to come and testify.

In response to the question, I will say that we received a letter from Mr. Hale's lawyer, and yesterday we had an extensive meeting with Mr. Hale's lawyer. He gave us a firm and unequivocal statement that his client would exercise the Fifth Amendment right with respect to questions, including those relating to the Madison matter.

I think one of the reasons is evident from Mr. Ben-Veniste's statement, that Mr. Ben-Veniste has a theory or a notion, based on what he has read in the press, that the burial insurance purchase was the product of some of the profits of Capital Management which was part of the very thing that we are looking at. It is not my place or anybody else's to tell a citizen of the United States what they can and can't do with their Fifth Amendment rights.

Both the Fifth and Sixth Amendments, I think, teach all of us that is a matter between the person and their own counsel. If the question arises whether this is a good faith basis to take it, I have to say, based on the discussion I heard yesterday, that it is absolutely based on the kind of evidence that could be put into that prosecution, it is absolutely sound advice for a lawyer to raise for a client to be concerned about anything that we raise being used as evidence in some prosecution, whether it's a good or a bad faith prosecution. This immunity is provided for by law. It is not special immunity. It is provided by statute. Hundreds of witnesses have received it. It gives him no more or no less than what every other citizen is entitled to receive as the price for giving up his Fifth Amendment rights.

Senator FAIRCLOTH. Mr. Chairman.

Senator SARBANES. Mr. Chairman.

Senator BRYAN. Mr. Chairman.

The CHAIRMAN. Wait a second, please.

Senator BRYAN. Could I ask our Counsel——

The CHAIRMAN. I am going to recognize a Senator who has not been heard from. Then I will recognize a Senator on this side.

Senator Dodd, do you wish to be heard?

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. No, Mr. Chairman.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Mr. Chairman, could I ask Counsel a question?

The CHAIRMAN. Certainly.

Senator BRYAN. Mr. Ben-Veniste, if the Resolution of Immunity that is before the Committee today were adopted and during the course of that testimony, either in response to a question or his expanding a response to another question, Mr. Hale indicated other acts of fraud which would constitute a felony unrelated to the State prosecution, would his testimony with respect to those other acts of fraud confer an immunity upon him?

Mr. BEN-VENISTE. What would happen, Senator, is that it would make it almost impossible under the teaching of the *United States v. North* to prosecute him for such cases, in my view. The question was asked whether this immunity would confer some special benefit on Mr. Hale.

Senator BENNETT. May I ask a question there?

Mr. BEN-VENISTE. Sir, if I could finish for a moment?

Senator BENNETT. Yes.

Mr. BEN-VENISTE. Let me respond, if I might, to the Senator from Florida's question.

Senator BENNETT. Sure. This is where I am going to law school. So I want to ask some questions.

Mr. BEN-VENISTE. Sure. First of all, in this regard, Mr. Hale has testified extensively for 9 days in Little Rock. I think that is a fact that we cannot ignore. This is not like a situation where a witness has refused to give any testimony at all without a grant of immunity. There is an issue as to the legitimacy of a claim of immunity when we are questioning him about the exact same thing.

The issue of whether somebody is or is not hiding testimony, the fact is there is an extensive transcript which we have all read. It is not from reading about a connection between the CMS, Madison fraud, and the burial insurance in the press. It's from reading the trial transcript that I get that information.

I am delighted that Mr. Chertoff has traded in his hat as Inspector Jovier to now be Clarence Darrow on behalf of David Hale. But quite correctly, the question is asked, "What has changed since the weeks ago in Little Rock when David Hale gave his testimony without blanket-use immunity?" The immunity that is proposed in this Resolution is exactly the same kind of blanket immunity that was conferred on Oliver North and John Poindexter.

Senator BENNETT. May I ask a completely innocent question?

The CHAIRMAN. Yes, Senator.

Senator BENNETT. I assure you, this is for my understanding.

Your opening statement, which is when the question came up, was that if he were to say something under immunity that would apply in the trial, that meant that it would be very difficult, if not

impossible, for you then to get a conviction in the trial because of the immunity? You quoted *United States v. North*. Is that correct?

Mr. BEN-VENISTE. There would be a burden placed on the prosecution by the courts, presumably an appellate court, if there were a conviction; whereby, the prosecutor would have the burden of proving they never heard the testimony, no one ever brought it to his attention, no one ever discussed it with him, and it didn't influence him in one iota in connection with the way he proceeded to prosecute David Hale.

Watergate was enough of a burden, but the *North* case was even different from that. The people who we prosecuted who had been immunized were the only people who pleaded guilty. We did not take one individual to trial who had been granted immunity by the Senate in Watergate.

Senator BENNETT. Here is my question: If the prosecutor has a case in the can right now and it is built on various types of outside information and sources unrelated to Mr. Hale, and then Mr. Hale comes here and makes a statement under immunity, does that invalidate the prosecutor's existing case?

Mr. BEN-VENISTE. It places the burden on the prosecutor to show that nothing that occurred in the immunized testimony influenced him in the slightest in connection with his strategy of how to prosecute, in connection with any questions that were asked of Hale or any other witnesses or any leads that he might have gotten. It is an enormous burden after *North* that a prosecutor has to shoulder in order to make that showing.

Senator, in the *North* case where they put that package together, they still were not able to satisfy that burden. Those convictions, as you know, were overturned.

Senator BENNETT. Would you be offended if I sought a second opinion?

Mr. CHERTOFF. Senator, the short answer is no, it would not invalidate the evidence in the can. The *North* case does not apply in Arkansas because it's the D.C. Circuit case and the general law on the subject is stated by the Supreme Court in the *Castaguard* case. *North* was much different because of the amount of material that got to the public from immunized testimony, including witnesses who had heard the testimony of other immunized witnesses, so that everybody was bathed in days and days of immunized testimony is totally different from what we are talking about here. Which is a witness who comes up for 1 day, who, in the worst situation, blurts out one answer to a question before it's possible to shut it down and with a prosecutor in the State who is forewarned about *North* and *Castaguard* and is perfectly capable of taking steps to make sure he can demonstrate that he is untainted by any of this information.

Senator BENNETT. Let me——

Mr. CHERTOFF. The short answer is prosecutors deal with this all the time across the country, and it is something that can be dealt with without any insuperable problem.

Senator BENNETT. Yes.

Mr. BEN-VENISTE. Senator Bennett, may I add to your inquiry. Over these months, I have enjoyed these dialogues, which will be coming to an end shortly. In addition to the specific substantive in-

formation regarding the burial insurance, the prosecutor would have to prove, were Hale to come here under a grant of immunity, that nothing else that Hale said gave him a lead for other areas of inquiry, that it didn't refresh any other witness' recollection who might be used against Hale to think of some other thing that they would testify to about Hale.

The *North* case is a very good analogy, because it was the televised nature of North's testimony which was so important in the decision saying how powerful the televised testimony was in connection with having an affect on other witnesses and the prosecution itself, a burden which was impossible for the prosecution to discharge.

Senator BENNETT. Thank you.

Senator BOXER. Mr. Chairman.

Senator BENNETT. I thank both the Counsels for their effort to educate me in the law. I appreciate it.

The CHAIRMAN. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Mr. Chairman, thank you so much. I will just take a moment of the Committee's time. I think the Chairman is right. We are going to take responsibility for the way we vote.

I have to tell you, Mr. Chairman, for me, after giving this a great deal of thought, I come down to a very basic common sense question. Why would we want to give David Hale a special deal that no other witness had when, in fact, Senators Bryan and Kerry have given us another route in which the Committee will not be manipulated, will not be used?

I want to put into the record the fact that David Hale is a convicted felon who pled guilty to two counts of defrauding taxpayers through the Small Business Administration of \$2 million. He is a convicted felon who admitted under oath that he had not planned on paying Federal taxes on about \$60,000 in cash he received from the FBI for living expenses while cooperating with the Independent Counsel, a convicted felon who told the Federal judge accepting his guilty plea in March 1994, that he never profited from his illegal loans but admitted in another Federal courtroom that he did use the money, a convicted felon who admitted lying to FBI agents combing his records in 1989. And it goes on.

I think it's fair to say that we don't know if he will be indicted, but if this is true and this is a person who stole from the poorest of the poor who wanted to bury their loved ones, for me to play a party [sic], in essence, granting a pardon in advance because, in a sense, that's what it is when you grant immunity. I don't trust him not to blurt something out. You are not dealing with someone who has a record of honesty here.

Senator DODD. Would my colleague yield?

Senator BOXER. I think it would be a mistake. I would be happy to yield to my colleague.

Senator DODD. There are two facts that people may not be aware of. That Mr. Hale is a former prosecutor and judge. This individual knows very well what he's up to. For a former prosecutor and judge to be in here taking immunity and the Fifth Amendment to avoid

the kind of prosecution that a State prosecutor is apparently seeking in Arkansas, I find reprehensible.

Senator MURKOWSKI. Mr. Chairman.

Senator FAIRCLOTH. Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Mr. Chertoff said before it is fairly simple, and Mr. Ben-Veniste indicated Capital Management is connected with the Arkansas Insurance Company—the burial association. Mr. Hale won't answer any question that relates to Capital Management, because they do relate to the Arkansas burial association. The Minority is throwing up a block to prevent David Hale from coming here and thinking of anyone they can that will block him from coming, because they don't want the American people to see what the jurors in Arkansas saw. We simply don't want the American people to see that David Hale was believed by the jury and the President was either not believed or ignored by them. That's what all the talk is about.

Senator MURKOWSKI. Mr. Chairman.

Senator MOSELEY-BRAUN. Mr. Chairman.

The CHAIRMAN. I am going to go from one side to the other. Senator Moseley-Braun and then Senator Murkowski.

Senator Carol Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you.

To my colleague, if I can just kind of make this plain, nobody has a problem with David Hale coming here. In fact, we should invite him to come.

Senator FAIRCLOTH. Then give him immunity and let him come.

Senator MOSELEY-BRAUN. The objection, sir, is to giving him a pardon in advance for any of the nefarious deeds that he may decide to tell us about. In fact, given the fact that he is a former prosecutor and judge, he might well pull off the biggest joke of the century by sitting at that table and letting it all hang out so that he can't be prosecuted for anything that he decides to talk about.

That is one of the reasons for the reticence on this side to give him carte blanche, just an open page, and say, "Here, have at it." We would like to have this handled in a way that serves the interest of justice, full disclosure, and that gets to the truth of the matter that's before us. Our only objection is to proceed in a rational way to do that. I don't know how to make it any clearer. The Minority wants him to come in. When he says, "I'm not going to tell you anything, because I want to take the Fifth Amendment." Then I think we ought to take up the particulars of what kind of immunity would be appropriate and not reach overboard.

Senator FAIRCLOTH. As I understand it, we've only talked about use immunity.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. I would encourage the Chairman to direct, if you will, the flow into the recognition that we can't have this two ways. The American people and this Committee are only going to have the facts it; indeed, Hale is brought before this Committee.

Now, I am sensitive to the concerns of any type of immunity that would provide Mr. Hale with protection from the charges on the National Insurance issue. But if that is the legitimate concern of the Minority, then they ought to make a specific proposal so that we can consider the technicalities to ensure that we get the facts.

Senator MOSELEY-BRAUN. We did.

Senator MURKOWSKI. And either propose——

Senator MOSELEY-BRAUN. We did that.

Senator MURKOWSKI. No, not necessarily, because we are subjected, under your proposal to Mr. Hale stating that he will not talk about certain things. He could take exception under the Fifth Amendment. Then the inability of this Committee to get the facts associated with that could be redirected.

Senator MOSELEY-BRAUN. Will the gentleman please yield?

Senator MURKOWSKI. Yes. Just let me finish my statement.

I would suggest, if you will, that perhaps Counsel for the Minority and the Majority try and pursue this area, because obviously they have a familiarity with it and they have a legitimate concern over a situation occurring that would benefit Hale, which none of us want to see happen.

Mr. Chairman, if we could get a concurrence from the Minority on their willingness to bring Hale in and then try and work out the circumstances, we could conclude this without it lasting all day.

Perhaps we could come back a little later to adopt or reject or consider their proposed agreement so that we can get on with this process; because, if, indeed, as I have heard over and over, the Minority has indicated a willingness to bring Mr. Hale here, then the question is how can it be structured in such a way as it doesn't benefit Hale from the pending charges associated with the National Insurance case.

Senator MOSELEY-BRAUN. To my colleague, we don't want to let him benefit and take advantage of this Committee by giving him the power to cover himself from any of his nefarious deeds over time. He could do that based on the proposal that we've had so far.

Senator MURKOWSKI. I understand. That is why I am suggesting that the Counsels get together and try——

Senator SARBANES. It's to Hale's advantage to play that game.

The CHAIRMAN. I would like——

Senator SARBANES. In other words, Hale will come in, take the Amendment, then he will say, "Now, you have to give me immunity." Then he will abuse the immunity. The way you avoid that is Hale comes and testifies without immunity, we don't ask questions about the Arkansas matter. If, in fact, questions get asked about it, Hale can then take the Fifth Amendment and protect himself. In the meantime, you don't run the danger that because he has been given a blanket immunity he can abuse the process and free himself from accountability for potential criminal acts.

The CHAIRMAN. Let me ask my colleagues: If we were to go forward with the subpoena requiring him to come before the Committee to give testimony Friday in private and if he were to assert the Fifth Amendment as it relates to a number of questions that might be asked—and we have every reason to believe, that he would do that—we would then go to court to get a ruling with respect to

whether or not that was proper. I would hope that we could get into court and get an expedited hearing on Monday.

Let me say, so that we can deal with each other and the public in good faith: Suppose the court rules that he is within his rights to assert the Fifth Amendment, and if we feel we want to hear from him, will we go forward with providing limited-use immunity? Will we take that question up on Tuesday if we can get a hearing, because we would have to vote on it, get the Special Counsel to sign off on it, get into the court to ask them to grant that limited-use immunity and then be back here on Wednesday or Thursday to hear him. I would like to know if we are prepared to agree with that, because if we agree with that, let's go forward.

It may be burdensome. We are out of the business of who is right and who is wrong as it relates to when a person can raise the Fifth Amendment. If you are willing, then I would recommend that we move forward, bring him in on Friday.

If he raises the various points that he indicates that he will, then we will go to court, seek an expedited hearing, hopefully the court recognizing the exigencies of the situation would give us a ruling one way or the other. If the court says that he's not within his right, why, then we would attempt to go forward without that. Of course, he could raise an appeal. If the court says that he is within his right, then would my colleagues be willing to provide use immunity. It's not a get out of jail free, or a pardon, because it has been characterized in that manner, but that his testimony could not be used against him so that the American people and this Committee get an opportunity to hear?

Senator SARBANES. Well, Mr. Chairman, I am not going to make that commitment, because it's an open invitation to Hale to invoke the Fifth Amendment in a plan or in a scheme to get immunity.

The CHAIRMAN. Wouldn't the court be deciding?

Senator SARBANES. So that's not—

The CHAIRMAN. Wouldn't the court be deciding whether or not he has the right to raise this?

Senator SARBANES. By lining it up that way, you are just making an open invitation to Hale at that deposition—

Senator MURKOWSKI. Mr. Chairman.

Senator SARBANES.—to take the Fifth Amendment, because then he says, "Well, if I take the Fifth Amendment"—

The CHAIRMAN. He has already indicated he is going to do that.

Senator SARBANES. Well, then—

The CHAIRMAN. My colleagues want both sides of the argument.

Senator SARBANES. No.

The CHAIRMAN. You say he is not entitled to it. We say, "Well, they indicate that he's going to raise it. Oh, he's not entitled to it." You say, "Let's test him." Well, let's go with the assumption that we will proceed in the manner in which you have suggested. If we bring him in and test him, let's follow what he can do. He can agree to testify. Then we have no problem. If he raises the Fifth Amendment, we go to court. I don't know how the court is going to rule. But I will bet you just about anything that the court is going to say he has that right.

Are we kidding ourselves? All of a sudden, you say that the person doesn't have the right to say, "I refuse to testify on the grounds

that whatever I testify to may incriminate me?" We are going to take that right away from him? Do you think he is not going to exercise it?

Senator BOXER. Mr. Chairman.

The CHAIRMAN. Who is kidding who? You can't have it two ways.

Senator BOXER. Mr. Chairman.

The CHAIRMAN. If you want a determination of the court and we will be bound by that, we will find out whether or not he can do that, then will we agree to immunize him or are we then saying we really don't want to hear from him?

Senator BOXER. Mr. Chairman, could I respond to your question, which I guess was a little rhetorical.

The CHAIRMAN. No, it wasn't rhetorical.

Senator BOXER. Let me be specific on how I feel about it. I think we have a good case to be made, laid out by Senators Kerry and Bryan, that if he asserts the Fifth and it's not appropriate, we will win that case. So I would like very much to test that.

The CHAIRMAN. Good.

Senator BOXER. What you are saying is, depending on what happens you will allow this guy, with a past that I'm sure his mother would be ashamed of, to come up here and to use this Committee so that he gets out of jail free for anything he might have done in the past. That is a question that is at the heart and soul of this side's objection.

I think you have a good path to go on. Asking us in advance of any court decision to grant this man something you have granted to no other witness, I don't think that I would lose one minute's sleep over this.

The CHAIRMAN. All right. You don't think it's right for me to ask you to prejudge?

Senator BOXER. No.

The CHAIRMAN. Fine.

Senator SHELBY. Mr. Chairman.

Senator HATCH. Mr. Chairman.

Senator BOXER. To prejudge what the court says?

The CHAIRMAN. Let me say that I am inclined to take the recommendation of my Democratic colleague.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Chairman, I have a few observations here this morning. Like most people, I think I can read the tea leaves. And the tea leaves mean that there is going to be a lot of disruption and delay here.

Who is protecting who here, and why? It is obvious that some people on this Committee are afraid of the testimony of David Hale before this Committee. Why? Who are they trying to protect? It is obvious they are trying to protect President Clinton from David Hale's testimony.

Senator BOXER. You already have his testimony.

Senator SHELBY. I have the Floor.

Senator BOXER. But you already have his testimony.

Senator SHELBY. Mr. Chairman, I have not yielded any time to the Senator from California.

Senator BOXER. I apologize.

Senator SHELBY. I thank you. But who is afraid of David Hale's testimony? Why shouldn't we grant the limited immunity? Earlier, Senator Domenici said that we have granted it over 300 times in Congress. It is my understanding that it was granted 26 times in Watergate; 27 times on the Joint Committee dealing with the hearings on Iran-Contra; and, 12 times, I think, recently.

What has come out of Arkansas in the last week? Twenty-four convictions, was my understanding, 24 convictions based on a lot of documentary evidence and the testimony of David Hale.

Why not give David Hale limited-use immunity? He's not going to abuse the Committee. I think we have great Counsel here and smart people. But what people are trying to do here is disrupt the Committee, not let any testimony come that would inure to the detriment of the President of the United States. That's the bottom line. And I think everybody here knows it.

Senator HATCH. Mr. Chairman.

The CHAIRMAN. Yes, Senator.

Senator HATCH. This is a good idea. What you are saying is: Look, we will defer to your desire to have the court make the determination if he invokes the Fifth Amendment. Sure, he is going to invoke it. Is there any doubt in anybody's mind that he is going to invoke the Fifth Amendment? Let the court determine it. Frankly, we ought to go from there. There is a cloud over this Administration caused by Whitewater and it is never going to go away unless we bring the guy in to testify.

Our Counsel on the other side has said that they could not wait to get David Hale before the Committee. If I recall correctly, he said, for example, that he wanted to question "that crook." Now look, it's important for him to come. If he invokes the Fifth Amendment and the court says that he has a right to do it, then we have to get him in here one way or the other to get the cloud dispensed.

Senator MURRAY. Mr. Chairman.

Senator HATCH. Frankly, it has got to be done. There is no other way around it.

The CHAIRMAN. I am going to make a motion that the Committee be reported as voting, and then, be recorded as voting unanimously that a subpoena be issued to require his appearance this Friday morning for a private deposition where we can then proceed on this matter. All in favor?

[A chorus of ayes.]

Senator SARBANES. A private deposition is no different from a deposition.

The CHAIRMAN. I want the record to show it is for a deposition. It carries unanimously. A subpoena is issued.

Hopefully, we can work our way through and possibly set the framework and the groundwork for a proper appearance or one that my colleagues feel comfortable with with Mr. Hale.

Senator SARBANES. Mr. Chairman, I want to yield for just one moment to Mr. Ben-Veniste, because I think it is important to put certain of this matter in context.

Mr. BEN-VENISTE. I think my—if I may call you my friend—

Senator HATCH. Did I misquote you? I don't know.

Mr. BEN-VENISTE. Not at all, Senator Hatch.

Senator HATCH. I didn't think so.

Mr. BEN-VENISTE. As you know, we have been trying to bring David Hale before this Committee.

Senator HATCH. And it ought to be done.

Mr. BEN-VENISTE. What we tried to do was to get him here even before he testified in Little Rock. There is a very substantial record for everyone to see of what he said. That has changed matters somewhat.

The real issue is not whether, on a very technical basis, he might assert a privilege that might be upheld to a wide variety of questions. I think the question that this Committee is struggling with is if David Hale is immunized and testifies publicly before the cameras, whether that immunized testimony can or is likely to interfere with the ability of the State prosecutors to bring the proposed prosecution against him. A court, considering the question of the Fifth Amendment claim, will not answer that question for us.

Senator HATCH. Would the Senator yield on that point? This is a man that has already been sentenced to 28 months in prison. He is already in jail. It seems to me it's more important to get rid of this cloud one way or the other than it is to worry about whether he's going to be prosecuted.

Mr. BEN-VENISTE. Well, that's the question.

Senator HATCH. If I just—I don't mean to interrupt you——

Senator MURRAY. Mr. Chairman.

Senator HATCH. Let me just finish this. You and I both know that those prosecutors have enough documentation and information that they can prosecute him regardless of what he says here.

Mr. BEN-VENISTE. Well, unfortunately, Senator, we may disagree on the interpretation of the *North* case in terms of the burden.

Senator HATCH. No, no. I agree with you that the——

Mr. BEN-VENISTE. How it satisfied——

Senator HATCH. —*North* case did probably change the law. But I am saying we know that they have enough documentation if they want to take him to court.

Mr. BEN-VENISTE. They do. The question is whether his immunized testimony before this Committee would interfere under the teaching of *North* with their ability to prove their case. And you may be right.

Senator HATCH. If you would yield one more time. The question is: Is it more important to get rid of this dark cloud over the President of the United States and the First Lady?

Senator DODD. Oh, please. Come on now, please.

Senator HATCH. Well, there is a cloud there.

Senator DODD. Bringing in a dark cloud to do it?

[Laughter.]

Senator HATCH. He may be a dark cloud, because if the American people see it and they believe him, then it's another matter.

Senator DODD. Come on.

Senator HATCH. But I am hopeful that you will be able to tear him apart.

Mr. BEN-VENISTE. Senator Hatch has really identified the issue.

Senator BOXER. Thanks for caring.

Mr. BEN-VENISTE. Senator Hatch has really identified this issue, because——

The CHAIRMAN. There has been one Senator who has not been heard from, Mr. Ben-Veniste.

Senator SARBANES. Well, let Ben-Veniste finish.

The CHAIRMAN. And that is——

Senator KERRY. That's the smartest Senator here.

The CHAIRMAN. That is Senator Murray. She has been waiting very patiently and I apologize to the Senator.

Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. I appreciate that, Mr. Chairman. I have not said anything at this point. I have tried to listen very carefully to all the assertions from the attorneys. I am not one to try and figure out what the real question is that we are dealing with here today. I have heard the assertions that it's some kind of cover-up for the President. I keep coming back to the basic question here, which is whether or not we should grant immunity to someone to come here and testify, not whether we don't want to hear him but whether this Committee will take the responsibility of granting immunity to a man who is in jail.

I have to ask myself why is he asking us for immunity? What doesn't he want us to know after testifying for 9 days in Arkansas? What is it that he obviously wants to say to us without fear of being put in jeopardy for having said that?

I, as a U.S. Senator, do not want to give away our rights in the jury system because we want so desperately to hear testimony again that has been given for 9 solid days. And we are willing to give away the rights of this judicial system?

What does this man want immunity for? We had better be very careful and cautious in granting immunity to a man who is serving a jail sentence, who is demanding immunity from this Committee. What is it that he wants to say that he does not want to be prosecuted for? I think we had better be very careful as we proceed.

Senator KERRY. Mr. Chairman, let me say one thing after that. I want to emphasize what Senator Hatch said, because the Senator has really summarized the choice for this Committee, ultimately, if Mr. Hale does not cooperate. What the Senator said is we have to balance the possibility of interfering with the prosecution, which he agrees might exist, against what he has called the dark cloud. And different people will choose to interpret how big and dark the cloud is, that's the balance.

I think it is an important statement by the Senator because it acknowledges precisely what Senator Murray just said in her argument, that she is not willing to make that balance the other way. But that balance is before the Committee.

Senator SARBANES. I would point out to the Senator that this dark cloud is already out there. Hale has testified 9 days at the trial. He has made extended statements to the media, which have been published. So it's not as though you are talking about a witness who hasn't laid out a lot of this material.

Senator HATCH. Mr. Chairman, I just want to make a remark, since Senator Kerry brought this up.

The CHAIRMAN. Yes.

Senator HATCH. Number 1, I think the cloud exists—interpret it whichever way you want to.

Number 2, I think it is more important for us to have cross-examination rights here in an open forum for the whole country to see. I think it's important that Mr. Ben-Veniste have that right. If we have to, I would be for giving Counsel enough time to be able to do this. Let's have it out and get it out. Do what needs to be done rather than just not do it and let the cloud exist.

Number 3, with regard to limited-use immunity, I remember the language—if I could have Mr. Ben-Veniste's attention. I remember the language in the *North* case, where basically the court said: "We only said this burden may be met by canning the testimony beforehand." It went on to say: "Just as wise prosecutors meet their burden of showing independent investigation by 'canning' the results of the investigation before the defendant gives immunized testimony." I have no doubt that they've done that; and, they know that this is likely to happen.

The man is in jail. He has a 28-month sentence. It seems to me that it's very important for you, Mr. Ben-Veniste, to have a crack at him so that everybody can see it. Now it may be important for our side, too, in the sense that the truth ought to come out, whatever it is. You can't just say the guy is a crook; therefore, he's not worth listening to. That may be, but the fact is you can't resolve this matter without having him appear.

Now if he comes in here and he says, "I take the Fifth," then we have given you another step that ordinarily you would never even have to ask for in Congress before. Then I think, at that point, we ought to just vote to grant him limited-use immunity and let you have at him rather than just keep playing around with this and act like it has gone away because he doesn't testify.

Mr. BEN-VENISTE. Senator, may I respond?

The CHAIRMAN. I am going to limit you to 1 minute.

Mr. BEN-VENISTE. I apologize.

The CHAIRMAN. OK, 2 minutes.

[Laughter.]

Senator HATCH. Maybe even 2½.

Mr. BEN-VENISTE. Senator Hatch—

The CHAIRMAN. You have just doubled your time.

[Laughter.]

Mr. BEN-VENISTE. You know me as a trial lawyer.

Senator HATCH. I do, and I have confidence—

Mr. BEN-VENISTE. And you know that as a trial lawyer, looking at David Hale and the various perjuries that he has confessed to already and the crimes he has committed, his motivation to lie, provides me, as a person who likes to cross-examine with an opportunity. But I think from a personal, selfish standpoint, I would love to do that.

Senator HATCH. I would love to see you do it.

Mr. BEN-VENISTE. When we posed the issue—and I think you've done a splendid job of posing the issue before this Committee in terms of what the choices are—the choices are whether to examine him, still again replicating essentially what has happened before but under a grant of immunity which may interfere with the ability of the Arkansas prosecutors to bring their case, canning the evi-

dence or what have you. The burden then shifts to them to prove that nothing that happens before us in any way influences them or any of their witnesses in any way with respect to that hearing.

Senator HATCH. But here, Richard, he does not have the benefit of the Rules of Evidence. That is the difference. You guys can ask some tough questions. You will have every opportunity to do so with the Counsel on our side. I think both of you should be interested in the truth, whatever that is.

Mr. BEN-VENISTE. We are and have been.

Senator HATCH. I know that. I didn't mean to imply you weren't.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. Yes.

Senator MURKOWSKI. Just a brief observation. I think Mr. Ben-Veniste made the reference to Hale's record of perjury and lying. I would also remind Counsel that 8 of the 24 convictions were as a consequence of Mr. Hale's testimony.

Senator DODD. Whoever said that?

The CHAIRMAN. Well, I think the Senator means there were 8 counts out of the——

Senator MURKOWSKI. Eight of the 24 convictions.

Senator DODD. Well, the jurors didn't say that.

Senator SARBANES. One juror called him an unmitigated liar.

Senator MURKOWSKI. The point is there were 8 convictions.

Senator DODD. Not based on his testimony.

Senator MURKOWSKI. Well, partially. Now, we can differ over just whose testimony. I think it's appropriate that there is some credibility associated with his testimony and those convictions.

If I could have the attention of Mr. Chertoff, isn't it true that all this Committee wants is to inquire about the illegal \$300,000 loan of which \$50,000 went to the Whitewater Development Corporation? This is the area of our concern with Mr. Hale?

Mr. CHERTOFF. Senator, I can say that that and the surrounding circumstances relating to the transaction including, as I understand, meetings; that there are press accounts that Mr. Hale alleges he had with then-Governor Clinton that were not the subject of the testimony in the trial because there were certain evidentiary limitations.

Senator MURKOWSKI. Well, that——

Mr. CHERTOFF. But what is quite clear is we are not interested in burial insurance.

Senator MURKOWSKI. All right. Now with regard to the limited immunity question, which has been raised by the other side: Can you identify specifically whether this precludes immunity from prosecution? I'm not clear relative to the arguments prevailing on the other side. While they are somewhat convincing, what assurances can we have or how can you craft with Minority Counsel to safeguard the situation from becoming advantageous to Hale?

Mr. CHERTOFF. I think there are 3 assurances. First, nothing that Mr. Hale does here can undo or erase any evidence that exists against him. Second, everybody in the Committee and policed by the Chairman of the Committee can make sure that we do not get into the area of the burial insurance; and he can be cut off if he raises it. Third, it may very well be, as a matter of law, that if he were to volunteer or insert extraneous matter into his answers that

that wouldn't be protected under the grant of immunity, that the grant would only apply to responsive material. We are going to look into that. I think that no one here is interested in interfering with the State prosecution. We can eliminate all but the most hypothetical possibility.

Senator DODD. Can I be heard, Mr. Chairman?

The CHAIRMAN. Yes, Senator Dodd.

Senator DODD. No one on this Committee may, but I'm sure Mr. Hale is interested if he can. This is a former judge and prosecutor. He knows what he is doing. This guy is a scurrilous character and he knows just what he is up to. I don't doubt the motives of my colleagues in terms of what they are interested in. Nor do I have any doubts about what Mr. Hale is interested in.

The reason that we passed the law that gave the Independent Counsels veto power over requests for immunity in the past was because we saw what happened in the *North* case. We didn't extend that to State prosecutors and other courts around the country. We did it because we saw what happened in the *Iran-Contra* case where someone abused the process and then avoided prosecution because of it. Maybe we should have drafted the law in a broader way to include anybody out there who had a concern about it. The reason they did it was exactly for what happened and the result.

The CHAIRMAN. I don't think so.

Senator DODD. Someone used the process here, testifying before a Congressional committee, and avoided prosecution. I don't think any of us want to sit here and say that we are going to allow this character—here there are 2,000 pages of testimony which are in the record now, his entire testimony. And you place in jeopardy a prosecution at the State level involving innocent people who were defrauded by this character if, in fact, those allegations are proved true. Yet, that's the risk we run for the mere benefit of having a public testimony of what is already available in written testimony. And so our concerns are not illegitimate.

We want him to come here. Let's do it under the way that Senator Bryan suggested. That is, none of us will ask the questions about that case. Let him come here and answer questions without using the judicial process as a way to avoid prosecution. In my view that would be a huge error on our part.

Mr. BEN-VENISTE. And—

The CHAIRMAN. Mr. Ben-Veniste, I get the last word.

Mr. BEN-VENISTE. I'm sorry.

The CHAIRMAN. We will attempt to go in the manner in which the Committee has voted. And that is to examine Mr. Hale, take his deposition on Friday. If he refuses, we will go to court and see if we can't compel. I feel we will possibly be back here Tuesday.

The question will then be raised again as to whether or not at that point in time we will want to hear his testimony. We will have to make that decision. But we will go that extra step to ascertain if we can get his testimony in the manner which satisfies all of my colleagues.

Senator MURKOWSKI. What if you can't get it by the June 14th?

The CHAIRMAN. That's it. That's the name of the game.

Senator SARBANES. Mr. Chairman.

Senator MURKOWSKI. Well, if you can't get it by the 14th—

Senator SARBANES. Could I—

The CHAIRMAN. Senator Sarbanes.

Senator MURKOWSKI. I think you ought to reflect on that a little bit more because, you know, we may be setting an unachievable timetable here. We don't know how the court is going to proceed.

The CHAIRMAN. The Senator is right, because we have to go to the Floor to seek enforcement of the order. There are a dozen ways procedurally. I hope if we are operating in good faith that my colleagues will join in a bipartisan effort. I assume that they want to examine Mr. Hale and find out how truthful or untruthful he is, to discredit him and also to open him up to charges of perjury. I am not going to be deceiving myself as it relates to what I think the outcome will eventually be, and I'm not going to prejudge now. Next week I will say to you I told you so.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes, Senator Sarbanes.

Senator SARBANES. I have one suggestion for the deposition on Friday. In fact, I press it very hard. The pattern, as I understand it, in the depositions has been for the Majority to go first and to question as long as they want and at the end of that for the Minority then to have a chance to question. In some instances, that has meant that the Minority questioning has come at the end of the day under a lot of pressure to conclude the deposition.

It would seem to me that it would make more sense to proceed the way we do in the Committee here on the questioning, where we go back and forth. I don't know that every half hour is necessarily the right time, maybe there could be an hour of questioning by the Majority and then an hour by the Minority.

Senator DOMENICI. Do you think he's going to testify at this deposition?

Mr. BEN-VENISTE. We are going to make a record.

Senator DOMENICI. That's what this whole argument is about. If he would testify, we are in clover.

Senator SARBANES. In any event, I don't see a problem. I would like to get some assurance that we will have a time period and a back and forth movement in the questioning.

The CHAIRMAN. Well, let's take that under consideration. I will leave it to Counsel to attempt to work out. If they don't work it out, then you and I will discuss it.

Senator SARBANES. All right.

The CHAIRMAN. All right?

Senator SARBANES. All right.

The CHAIRMAN. I think it's all going to be academic. OK?

Senator SARBANES. Yes.

The CHAIRMAN. We stand in recess.

[Whereupon, at 12:45 p.m., Wednesday, June 5, 1996, the Committee was recessed.]

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION

TUESDAY, JUNE 11, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:10 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato, (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Good morning.

This morning the Special Committee is meeting to consider the question on whether to vote a grant of limited-use immunity to David Hale so that the American people can hear and see Mr. Hale's testimony.

The Senate has charged this Committee with the responsibility for investigating matters involving Madison Guaranty and David Hale's company, Capital Management Services. The question has to be asked: How can the Committee complete its investigation without hearing from Mr. Hale?

David Hale was a key witness at the recently concluded trial in Little Rock of James and Susan McDougal, the Clinton's business partners in Whitewater, and Arkansas Governor Jim Guy Tucker. He testified that the then-Governor Clinton pressured him into making a fraudulent \$300,000 loan to Susan McDougal. The jury convicted Susan and Jim McDougal on the 8 counts directly involving this loan. Fifty thousand dollars from this loan was funneled into Whitewater. In view of the verdicts in the Tucker/McDougal trial, the American people have a right to see and hear Mr. Hale testify.

It appears that my Democratic colleagues and the White House are afraid to let the American people judge for themselves whether Mr. Hale is telling the truth. Mr. Hale has not testified about two other alleged meetings he had with President Clinton about this loan. One was supposedly at the State capital and another was at a shopping mall. This Committee must question Mr. Hale about

these meetings in order to present a full and fair picture to the Senate and to the American people. The American public needs to judge Mr. Hale and his testimony.

Last week, the Democrats suggested that we ask a court to decide the issue of whether David Hale is asserting a valid Fifth Amendment privilege. Senate Legal Counsel informed this Committee that we could not get a court decision prior to the June 17th expiration date, so we offered a compromise. Let's put partisan politics aside and ask an independent third party, a retired judge, to advise the Committee on whether Mr. Hale had a valid privilege. We proposed three prominent Democrats. Retired Supreme Court Justice Byron White, former Attorney General Benjamin Civiletti, and former Attorney General Griffin Bell. But my Democratic colleagues would not agree to this proposal.

Unfortunately only one conclusion is possible in my opinion, and that is that my Democratic colleagues do not want Mr. Hale to testify and their so-called legal arguments are simply an excuse to hide the truth concerning what took place.

I believe that is unfortunate. I think this Committee, obviously, would have been in a much better position to judge the truth or falsity by having Mr. Hale testify, by examining him, by cross-examining him, and by impeaching him, if necessary, with respect to statements that he might make, and also recognizing that he would still be held accountable for any crimes that he has committed and, indeed, for any perjurious statements that he might make.

I think the American people have a right to these facts and I am not under any illusions as to what the outcome of our vote will be today, but I am prepared, after everyone has an opportunity to make his or her opinions known, to proceed on the Resolution we initially offered, and that is to immunize him from prosecution as it relates to testimony that he may give before this Committee. I think that a copy of the Resolution has been distributed to my colleagues.

Senator Sarbanes.

OPENING STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, Mr. Chairman, we had this debate of course last week at some extended length, and I don't know that it's necessary here this morning to repeat it all. Let me just make the following observations.

In my view, the game of Mr. Hale's lawyer was clearly revealed in the letter that he sent to you and me on June 6th, and I just want to quote from that letter on the first page, last paragraph:

In the absence of a court order to testify and a grant of immunity as provided by Federal law, any testimony by Mr. Hale regarding any matters before the Special Committee may be used against him in some fashion in connection with an announced criminal prosecution of Mr. Hale in Arkansas and any other State or Federal prosecution.

Now let me just underscore a couple of things.

First, this statement by Mr. Hale's lawyer made it clear that they would require a court order in order to testify, and that, in effect, rendered the notion of a special master to rule on the matter, I think, obviously something that was not feasible or practical.

Second, they have been very clear in laying out that they want blanket-use immunity. It says, "Any testimony by Mr. Hale regard-

ing any matters before the Special Committee." Any testimony on any matters before our Committee may be used against him in some fashion in connection with an announced criminal prosecution of Mr. Hale in Arkansas. That is those allegations that have been made with respect to the burial insurance, where poor families were taken advantage of.

But then the lawyer goes on to say, "and any other State or Federal prosecution." Obviously, Hale's lawyer seeks an immunity. In fact, Senate Legal Counsel made it clear that there is substantial risk that, in effect, the Committee could be manipulated to give Mr. Hale an immunity bath. And I don't think we should do that.

We have tried earlier and throughout the year to get Mr. Hale in to get his deposition, to get his testimony. That is not the issue. The issue is whether he should be given immunity. And it is clear from his lawyer's letter that they are seeking the very broadest immunity possible. I think, as I indicated last week, that they are seeking to manipulate the Committee in order to gain protection for themselves against other possible legal action. Therefore, as I indicated last week, I don't think the Committee ought to allow itself to be used in that fashion.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Shelby.

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, the time of this Special Committee on Whitewater is about to expire. The Democrats are so acutely aware of this it appears they are joining in a cover-up of the White House with total disregard of their responsibilities to the American people. They make excuses about "use" immunity, but they know very well that Congress has granted immunity to more than 300 witnesses since 1970.

Unencumbered by the facts and evidence presented, the Democrats have deemed themselves the gatekeeper of information and have unilaterally decided to lock the testimony of David Hale far and away into a vault so the American people can never hear Mr. Hale's testimony. The opposition party does not want Mr. Hale to testify because they know very well, Mr. Chairman, that Mr. Hale would testify about two additional meetings with then-Governor Clinton, now President Clinton.

After 37 convictions and several resignations from top Administration officials, why, Mr. Chairman, won't the opposition party let the American people hear the testimony of this witness and decide for themselves the value of what he has to offer? What are they scared of, Mr. Chairman?

If David Hale is not allowed to testify, we will never, ever hear the testimony regarding the two meetings between David Hale and then-Governor Clinton. Yet, I believe it is the responsibility and duty of this Committee that demands we investigate this matter.

Mr. Chairman, we do not live in the old Soviet Union. This is not the Kremlin. It is not our position to censor what the American people should hear. They are smart enough to decide for themselves what they should and should not believe. Our objective is to find the facts and with 3 days to go the Democrats are relying upon

procedural roadblocks to deny the American people rather than articulating a position based on the facts.

On June 7th, The Wall Street Journal ran an editorial entitled, "Senators Join Cover-Up." The editorial concluded by saying:

The misuse of law enforcement powers—threatening a prosecution witness to punish Mr. Hale as an adverse witness and using the excuse to avoid public scrutiny—is corruption of an especially sinister cast.

Today is truly an historic day in Washington, Mr. Chairman. Today is the day the Arkansas Democratic Machine blocks the U.S. Senate and the American people from hearing the testimony of David Hale. Today the American people lose and they lose big.

The CHAIRMAN. Chris.

OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, just very, very briefly, if I may on this matter. As Senator Sarbanes has said, we went through a lengthy discussion last week on this, and it seems to me the situation has not changed. One might argue, in light of the letter from Mr. Hale's attorney, in fact, made the point that any prosecution on any matter.

I would point out that the Committee, either before us or in deposition, has heard from 270 witnesses in the last 2 years. This is the first person ever to seek immunity out of the 270 witnesses we have had before us. And this man, let's be quite candid, knows what he's doing. You are talking about a former judge in Arkansas, a former prosecutor in Arkansas, he knows very well how to work this system.

He is trying to do one of several things. One, he is either trying to weasel out of a potential State prosecution in Arkansas, which is probably what he is up to in this instance; or two, he wants this Committee to give him a license to lie, that's all.

We have 1,600 pages of testimony and 9 days of trial in the State of Arkansas, all of which is available for people to go over. He did not get immunity for that. So it is obviously other matters they are concerned about.

I just don't think at this point, Mr. Chairman, with all due respect, that this Committee ought to be a participant in a process that would allow Mr. Hale to escape either prosecution in his own State for allegations that are very serious, or to be able to avoid prosecution on matters of which this Committee may not be aware at this particular point. So I think it is unwarranted to grant him that immunity, and I hope that the Committee would move on and finish up our work here.

Let me just last point out and say to my colleague from Alabama, it's the hyperbole that does damage to this process. There have not been 37 people from this Administration that have been indicted or found guilty of anything, not a single one. Yet when statements are made like that by Members, it does serious damage to the process. When someone says 37 high-ranking White House officials, that is just not the case, there isn't one. So I would hope that in these waning days and hours here, Mr. Chairman, we could kind of tone it down in a sense, make our points and move on. But those kind of statements don't do justice to the process.

Mr. Chairman, I would just ask to yield a few minutes, if I may, to Mr. Ben-Veniste, to make some comments on the remaining time that I have available.

Mr. BEN-VENISTE. May I make only two points.

First, in terms of the statement of cover-up. Obviously, as a professional whose dealt with cover-ups, I am sort of sensitive to how that term is thrown around. And I will say that rather than being locked up in a vault, kept away from the American people, David Hale's testimony is available for anybody who wants to read it. It is here. This Committee has reviewed it, the staff certainly has. It is 1,600 pages of testimony. This is not a cover-up. This is David Hale's record under cross-examination where the jury concluded, according to its members, that David Hale was not truthful in terms of his testimony relating to President Clinton.

The second thing I would like to address is that although every single news article and every person talking about David Hale refers to the fact that he has alleged that President Clinton, then-Governor Clinton, pressured him into making a loan, the facts are otherwise. In fact, David Hale in a televised interview, refuted the notion that President Clinton pressured him. He said he did not feel that President Clinton was pressuring him. That is why the prosecutor in the McDougal/Tucker case told the jury, in his rebuttal argument, and I am quoting: "There've been no allegations of wrongdoing on the part of David Hale directed to the President, and there was never any suggestion, for instance, of any pressure."

I went back through 9 days of testimony and not once was there a suggestion that David Hale testified he was put under any pressure. Now those are the facts.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Domenici.

OPENING STATEMENT OF SENATOR PETE V. DOMENICI

Senator DOMENICI. Mr. Chairman, I will be very brief.

First, I want to take this opportunity to congratulate you on the effort that you have put forth in this very, very difficult, sometimes one might have even called it an ordeal. I believe the Committee has done its job in an excellent manner, and much of that is attributable to your leadership and your desire to get the facts, and I congratulate you in that regard.

Mr. Chairman and fellow Senators, I think the real issue is almost brought more to the surface by the Counsel for the Minority putting that voluminous pack of paper up there and saying, here Americans, you can find out what Hale says and what he has done, just take the liberty of reading this. Nobody's going to believe that, in all deference to the distinguished Counsel. What we really needed was to have the American people hear him with every opportunity to cross-examine him. That was the issue, not a transcript that took you 9 days to review or however long you said, excuse me, how many hours to review this, Counsel?

The CHAIRMAN. We have reviewed it carefully. It took 9 days for Mr. Hale to give that testimony.

Senator DOMENICI. Nine days for him to state it.

The CHAIRMAN. All of which was covered by the press.

Senator DOMENICI. But that is not the issue. None of it was covered for the American people to see, as they have seen the other witnesses come before this Committee and testify where everybody could watch them and see them.

The issue is very plain and very simple. You all talk out of both sides of your mouth. We really would love to hear him, we would love to cross-examine him, he is a liar, and then you do everything humanly possible to avoid his testimony.

There is something strange about that. It doesn't ring true that, indeed, you wanted to tear him up because he's such a bad actor, and then you avail yourself of your rights to say he shall not testify before this Committee and he shall not do that ever. You used excuses like he isn't entitled to the Fifth Amendment, and you knew that he was. You said, let's go find out, and we went and found out. Then the Chairman offered you another approach; and you turned that down.

So actually the issue is very, very simple. We were here to get the facts. We got the facts except we didn't hear from Judge Hale. And the American people are going to have to understand, before we are finished, that there was something very, very sinister about this. Why could we not hear him? It has nothing to do with this exaggerated claim, on his part, of immunity. Any lawyer would tell him to claim immunity before this Committee.

How many lawyers are there here? You go in the back room and search your conscience and say, would you let him appear without claiming immunity? Maybe one or two of you would. But frankly, I don't believe many lawyers would tell him to do that, especially when he is being hounded in the State, at least prior to this conviction, to keep his mouth shut in these hearings, or he would indeed have some trials, he would get indicted. Now all that's out there, everybody knows that.

So, Mr. Chairman, while we could have had a total record, including an affirmation to the American people we have heard from every relevant witness, we're just going to have to say, except we haven't heard from one of the most significant witnesses for you to judge, Americans, whether you believe him or not. I think that's what you've been trying to do Mr. Chairman, and I commend you for it. And although you have failed, I think the public understands the real situation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Senator Kerry.

OPENING STATEMENT OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Chairman, let me speak directly to the comments just made by the Senator from New Mexico. He asked the question, why will David Hale not be heard before this Committee. The answer to that question is because David Hale, lawyer, judge, prosecutor, knowledgeable in the law, has decided not to come here and repeat the testimony that he has already given without immunity in a court of law subject to cross-examination.

So the question before the American people is, why should this Committee be asked to take this former judge, lawyer, and prosecu-

tor and reward him for his unwillingness to say before this Committee what he has already said in a court in this country? The answer to that question is very clear. He's weaseling and dealing and bamboozling and working hard to cut a deal.

The question was put by Senator Hatch very, very aptly a few days ago in our discussion here, when he said: You know, really what you have here is a balancing ultimately and the balancing is whether or not his testimony is so valuable that he ought to be given immunity against any crimes that he has committed.

Now why should this Committee give him what the court didn't give him? Why, if he was willing to go before the court and speak, subject to cross-examination, should we suddenly give a greater value to the testimony that he has already given, simply because it is going to be here in front of the television cameras with a license to come in and say whatever he wants?

I am not willing to reward a scumbag who has already violated the law and admitted that he is a liar, and let him come up here in front of the Committee and have immunity from the crimes that he has committed, particularly from a State prosecution alleged to have involved ripping-off a whole lot of African-American poor folks for an insurance scam. I mean, is that what we ought to do?

It is not as if any Senator that is a Member of the Committee can't go and read these documents and make a judgment about who is doing what in this particular case. There is nothing being hidden from us, there is no vault, there is no refusal of this Committee to be able to get at the issues.

I think people are just upset because they can't have another media circus, or because they can't come in here and let this guy come in and do whatever the heck he wants to do. He is denying this Committee that right, not us. He and his lawyer have made a choice to try to cut a deal. And on balance, because his testimony is already available to us, I choose not to reward him for his criminal activity. I choose not to give him the ability to get what he could not get from the prosecutor, to get what he could not get from the court, and to somehow come here and be rewarded for his whatever alleged criminal activities may be.

I think that would be an enormous mistake for this Committee and I think that to use these terms, you know, I mean look at these documents. It is not as if we don't know what he is going to say. We have just had the Senator from Alabama tell us what he's going to say. I mean, what's being hidden from this Committee? It's the most ridiculous set of assertions I have ever heard.

David Hale is the only person responsible for what is happening here, and since he chose once to testify, he can chose again, but he wants the deal and I'm not willing to give him a deal and reward him for his history.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

OPENING STATEMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. You know, we are doing a lot of talking this morning, and having a good time doing it. We are talking about what is the question before the American people, and a lot of legal terms and a lot about use immunity and what kind of immunity.

And we keep talking about what is the question before the American people, what do they see?

Well, they are not interested one whit in David Hale. They are not seeing David Hale. He is not really an issue here. What they are seeing is the use by the Democratic Members of this Committee to continue to struggle to cover-up Clinton. That's exactly what we are talking about. We are not hiding Hale, we have referred to him as a scumbag. I would use that word carefully in view of the adage that birds of a feather flock together.

David Hale is not the issue. The issue is the same thing we have been going through and I have said from day one, trying to get information from this Administration, wherever it can be blocked, as I said, is like eating ice cream with a knitting needle or whatever you want to say, it is a continued roadblock and refusal to do it.

What we are doing now is to struggle to try to keep this thing down until November. We don't want David Hale here testifying because he'll embarrass the President. We are not rewarding Hale, we are attempting to reward the President by keeping as much as we can under cover until the blessed day of November comes.

Now, Mr. Chairman, I would like to ask a question. On July 6th, the statute of limitations will expire on David Hale on the State charges. I have great curiosity. Would the Democratic Members of the Committee be willing to extend the life of this Committee until some time immediately after July 6th, and if we can get David Hale to come then, would they be willing to do that and prove that they're not trying to cover-up the President and hide what went on in Arkansas, but really would like to get the truth out? I think that would be a good question to ask, and that's all I have to say.

Senator SIMON. If my colleague would yield, would you like to extend it to November 5th?

Senator FAIRCLOTH. No, the 6th is the——

Senator SIMON. I understand, but you want to extend it until November 5th?

Senator FAIRCLOTH. No, I said immediately after July 6th, Senator Simon. If it is not a cover-up of the Clintons, why can't we go ahead and do it? Why can't we hear David Hale? Nobody here is interested in David Hale?

Senator SARBANES. Well, it's an easy question to answer. I mean, if you look at the letter from Hale's lawyer, he makes reference not only to the announced criminal prosecution in Arkansas but any other State or Federal prosecution.

The real question is whether you're going to give David Hale an immunity bath. And many of us feel very strongly he ought not to obtain immunity. We've been seeking his testimony over a number of months, but to bring him in and give him immunity and then allow him to walk away scott free from any of these other charges that may be brought against him, we don't know what there are, but his lawyer obviously has something in mind. He has written this paragraph very carefully, and I've been over it very carefully.

Senator FAIRCLOTH. I haven't been over what the lawyer wrote, but aren't we talking about by not giving David Hale immunity, we are giving the President of the United States immunity by not getting the full answers out. We are granting immunity to the President of the United States by refusing it to David Hale.

Senator SARBANES. That is assuming that what Hale has to say hasn't been heard. There's 1,600 pages here of Hale's testimony in the trial in Arkansas, and there are other statements that Hale's made on the public record over a sustained period of time.

Senator FAIRCLOTH. Well, if we have heard all that David Hale has to say, why are you so afraid of him coming here and saying something else?

Senator SARBANES. Because we don't want to give him immunity and let him get a get-out-of-jail-free card.

Senator FAIRCLOTH. No, we want to continue the immunity of President Clinton.

The CHAIRMAN. Senator Bryan.

OPENING STATEMENT OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Mr. Chairman.

I don't think that the American people ought to be confused this morning. This is all about partisan politics, an attempt on behalf of the Majority to seek to embarrass the President by prolonging this hearing. It's gone on for many, many months.

I might say that I think our Chairman actually was somewhat prophetic when he said on November 28, 1995, and I quote him:

If this matter is dragged out into February or later, I believe, legitimately, questions can be raised as to why we are bringing him in so late and getting into next year and the political season, and I think that's a very legitimate concern of this Committee, both Democrats and Republicans, and I would like to avoid that.

Well, unfortunately we haven't avoided that. We are right in the middle of it. I think some context needs to be placed. First of all, the Democrats ought to have had Mr. Hale testify last year. That did not occur. Now this is a twice-convicted felon and, as my colleagues will recall, there was a proposition advanced at our last hearing that purported to seek limited-use immunity for him. That was what was being discussed, very limited use.

A number of us felt that this Committee was being maneuvered and manipulated not into a limited use, but a blanket immunity or an immunity bath, as Senator Sarbanes has just characterized it. Well, shortly after our last meeting on Thursday, the letter which Senator Sarbanes has shared with us, was sent to our Chairman and the Ranking Member, and I think it's worth reading the operative paragraph again.

In the absence of a court order to testify, and a grant of immunity as provided by Federal law, any testimony by Mr. Hale regarding any matters before the Special Committee may be used against him in some fashion in connection with an announced criminal prosecution of Mr. Hale in Arkansas and any other State or Federal prosecution.

So the concern, obviously, of his counsel is not just the Arkansas prosecution which has been discussed or alluded to at some reference here, but to potential other State or other Federal prosecution. Why in the world would we give a twice convicted felon an immunity from other crimes, State or Federal, the circumstances of which we know not?

I believe really what is involved here is that what we are not prepared to do on our side of the aisle is to give a twice-convicted felon a get-out-of-jail-free card to further the partisan interests of the Majority.

The CHAIRMAN. Senator Grams.

OPENING STATEMENT OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman.

For the second time in 2 weeks, this Committee has been called to vote on allowing David Hale to testify in public on the pressure applied to him by then-Governor Clinton to make a fraudulent loan to Susan McDougal. I fully expect that for the second time in 2 weeks, the Democrats in this Committee will say no. The question is, what is so important that they have decided to play this fourth quarter game of beat the clock?

Now the Democrats have tried to make the case that they aren't hiding anything, that they want to see David Hale testify as much as anyone. But actions, Mr. Chairman, speak louder than words and by their actions, the Democrats have made one thing quite clear. They don't want David Hale to testify in public, not today, not tomorrow, not ever. And so it will be. David Hale won't testify before the public. This Committee will file its report without all the evidence. Many dirty little Arkansas secrets will be kept hidden from public scrutiny.

So today, as the White House whispers orders from the sidelines, the clock will run out on this investigation.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Boxer.

OPENING STATEMENT OF SENATOR BARBARA BOXER

Senator BOXER. Thank you, Mr. Chairman.

I think we have to ask ourselves why we are in this debate. I think the answer is because the Senate, in its wisdom, has a rule that says the Majority of any Committee cannot grant immunity by itself. And if ever we saw the need for such a rule, it is in these proceedings.

Now the fact is granting immunity is very serious. That is why the Senate, in its wisdom, has this rule. It protects the Senate from itself. It protects the Senate from granting immunity in a situation just like this when it would be used for political purposes. A pardon in advance, that is what my colleague from Illinois called it. And that's very serious.

So you have to ask yourself why you want to do that, and without repeating all the facts of the case, let me just say, what are you granting this pardon in advance for? For testimony that already has been heard.

My friend from New Mexico says, yes, but reading the newspaper about this and reading the documents, we want to bring this David Hale forward, right here, so that the American people can hear him say what he already said. My friend from New Mexico, who is my Chairman on the Budget Committee, for whom I have a great deal of respect, is willing to give a pardon in advance to this man.

Who is this man? Let's see what the jurors in Arkansas said about him. And everyone is praising the jurors for their work. I think across the board it was a fair jury. Juror Colin Kapp said, "The jurors considered Hale an unmitigated liar." Juror Ernest Williams said, "I didn't believe a thing Hale said." These are people who have made an informed judgment. For us to give a pardon in advance to an unmitigated liar, a twice convicted felon, is something I am simply not going to do. And my people in California did

not send me here to do that. Now if my friends on the other side think it's worth doing that, that's their decision. But it certainly isn't mine and others on this side.

So I think we are just in many ways reiterating the debate we already had. We should just move forward because I think that is the basic conscience question. Do you give a pardon in advance to a man like this? You answer it your way.

Thank you.

The CHAIRMAN. Senator Bennett.

OPENING STATEMENT OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I have nothing really new or exciting to add to the dialogue, but I must make a few observations just to make it clear where I am on this.

We have already heard from him, there is nothing new to learn. Statement number one that has been thrown out here. I disagree with that. He testified in a court situation, very controlled. The judge ruled out of order some of the testimony that the prosecutor wanted on the record.

He said he has had three meetings with President Clinton. He testified about one of them in the trial. I would like to ask him about the other two. I would like to ask him questions about the things he was not allowed to testify to in the trial.

If it would make the Minority feel happier, I would be happy to stipulate that we wouldn't ask him any questions about the things he testified to in the trial, and we would spend our entire time with the trial reading that testimony, and restrict our questions entirely to other matters.

To me, it is very clear that there is a lot he can tell us that had nothing whatever to do with what he testified to in the trial in Little Rock. The statement that we've heard what he has to say, and all we need to do is read the testimony and have nothing further to learn from him, is not a statement I accept.

Number two, we can't give a pardon in advance to a criminal. As I've said before, the man's in jail. The man's career is ruined. The speculation that you might damage the efforts of a prosecutor who is trying to pile on doesn't impress me very much.

If he were on the street, if this use immunity would give us the possibility that he would remain on the street, that he would continue depredations against the common good by virtue of what we were doing, then I would be a little more sympathetic to it. But I'm not sympathetic to the idea of giving, once again, not blanket immunity, not an immunity bath, but use immunity only to a man who has seen his career destroyed and who is in prison, does not strike me as any threat to the public safety or the public good.

Now let's get to statement number three about this immunity and the immunity bath and the get-out-of-jail-free card, and a pardon in advance. These are all wonderful sound byte phrases, but the fact is we are not doing something special for David Hale if we do this. Since the use immunity statute was passed in 1970, Congress has granted it 300 times. Oh, I get told, you have to take into consideration the way Ollie North and his lawyers changed the law

and turned use immunity into an immunity bath. And by the way, Ollie North got off on a technicality after his testimony.

Since the prosecution of Ollie North, the Senate alone—I don't have numbers for the House—has given use immunity to 12 additional witnesses and somehow the republic has survived. Somehow we've been able to get on without having everything crumble in giving this use immunity since Ollie North.

So, Mr. Chairman, if it comes to a vote, I will vote to grant use immunity, as the Congress has done over 300 times before. I would be willing to agree not to question Mr. Hale in a redundant fashion about anything he has already testified to under oath, and restrict my questions entirely to new material that I think we have a right to hear.

I reject the notion that we are in fact giving a pardon in advance when we are dealing with somebody whose career has been destroyed by virtue of his own actions, and then the law enforcement procedures that followed those actions, by giving use immunity to a man who is already in jail, and not likely to get out. I reject the notion that that's an immunity bath. To me, it would be the proper, prudent, public thing to do.

I recognize that the votes are not going to be there. I am sorry that we are not going to be able to ask Mr. Hale those additional questions and find out those additional things that we don't know, but instead those will be forever left in the realm of speculation and newspaper reports because we won't be allowed to put him under oath. I think, ultimately, that does not serve the cause of truth or exposure in this whole debate either. But we are where we are, Mr. Chairman, and let's proceed.

The CHAIRMAN. Thank you, Senator.

Senator Moseley-Braun.

OPENING STATEMENT OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

Mr. Chairman, there's been some harsh words this morning and I couldn't help but think, when one of our colleagues was using words, strong words to describe the opposition of the Minority to a blanket immunity, I couldn't help but be reminded of a poem that I learned as a child. It went, and I paraphrase: As I was climbing up a stair, I saw a man who wasn't there, he wasn't there again today. I wish, I wish he'd go away.

Well, the fact of the matter is, I think it's a disservice to use the words "cover-up" after some 276 depositions, after some 51 public hearings, and after 300 hours worth of work by the Members of this Committee.

Some of the Members of this Committee found no there there. We did not find a man atop the stair. Quite frankly in any event, we are not prepared to give Mr. Hale, which is the specific discussion here today, a get-out-of-jail-free card under the circumstances. Give him the chance or take the chance that he can never be prosecuted for illegal acts that he may have committed.

We have been there. We went there with *United States v. North*. In that case, the court was very clear, and I want to quote:

If the Government chooses immunization, then it must understand that the Fifth Amendment in *Castigar* means that it is taking a great chance that the witness cannot be Constitutionally indicted or prosecuted.

Some of us, Mr. Chairman, are just not prepared to take that great chance, which doesn't make sense. The *Castigar* decision, and I quote the *North* decision further:

Castigar does not prohibit simply, "a whole lot of use or excessive use or primary use of compelled testimony. It prohibits any use, direct or indirect."

Since David Hale has sought the same immunity that was conferred on Oliver North, what we are looking at is a situation in which he, Mr. Hale, has plea bargained a deal for himself in a trial. His testimony is there but that was as a result of a plea bargain. Now, he wants to plea bargain here regarding anything and everything else. Mr. Chairman, I don't think that's the Committee's job.

Specifically, in the March 1994 plea bargain, the government promised Mr. Hale, and I quote:

If David Hale fully complies, he will not be further prosecuted for any crimes related to his participation in the conduct of Capital Management, Diversified Capital, and Madison Guaranty Savings & Loan, and any other crimes to the extent that David Hale has disclosed such criminal activity to this office as of the date of this agreement.

So he cut himself a really sweet deal with regard to the trial there. The result is all that testimony, Mr. Chairman, that's sitting right there. And that testimony's been reviewed and there is no there there either.

Mr. Chairman, some of us do not believe that it makes sense to turn this hearing into a man-hunt or a witch-hunt or whatever you want to call it. We've done our job, we've followed the direction that was taken with the Resolution that set up this Committee, we have gone over hundreds of thousands of pages of documents, and we have listened to enough witnesses. Mr. Hale's testimony on the things for which he was granted immunity is before us, and to give him, again as my colleague says, a pardon in advance, a get-out-of-jail-free card, or alternatively, allow him to take an immunity wash, does not comport with our view of our responsibility.

So I would just say to my colleagues, it really does a disservice to the work that everybody has put in here. I mean, we may have different positions, we may see this differently, and we may reach different conclusions. It is a disservice, however, to deprecate, diminish, and demean the work of the Minority Members of this Committee, who, as much as anybody else, have sat here dedicated to trying to get the truth out, dedicated to fulfilling our responsibility under the Resolution, and dedicated to trying to do our jobs as elected representatives of the American people.

Thank you.

The CHAIRMAN. Senator Murray.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

It seems to me ironic that 245 individuals have been deposed by this Committee and not one of them has asked to have immunity. Every person who has been deposed or come here as a witness will be held accountable for their words.

It seems really strange to me that the one person who's serving a jail sentence for the next 2 years is asking this Committee to

grant him immunity for anything that he says when he comes before this Committee. He will be out in several short years. He doesn't have a great life ahead of him, I agree with the Senator from Utah, but he will be out of jail in 2 years.

I don't think it's piling on for the Arkansas prosecutor to want to go after Mr. Hale if he chooses on behalf of poor African-American families in Arkansas who were robbed of burial insurance that they had bought for their family members in a scam that involved David Hale.

Certainly, this Committee ought to be aware of those families, and granting David Hale immunity to come before this Committee is asking for blanket immunity. He's clearly, in this letter, saying to us that he wants blanket immunity. For us to grant him that does a disservice to all of those families and anything else that he wants to bring before us, accidentally, otherwise, whatever.

I just do not believe that this Committee should be responsible for granting this one person, out of all of the hundreds of people who have been deposed by this Committee, the one person who is serving a jail sentence, to be giving him immunity and not to be held accountable for what he says in front of this Committee.

The CHAIRMAN. Senator Murkowski.

OPENING STATEMENT OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

I guess this thing's on. You know, I think it is really unfortunate that we are down to this situation where right now we have the source. He's right here in Washington, DC. David Hale has been transported to Washington, and approval has been secured from the Independent Prosecutor, but the Democrats are preventing his testimony.

Let's not kid ourselves, Mr. Chairman, about the importance of David Hale's testimony. We've had the Democrats and the Counsel loudly declare the importance of that testimony, and the Committee has questioned numerous witnesses about their contact with David Hale. Bottom line, it has been second- and third-hand information. So here he is now, and yet we are being prevented from hearing him. And the American people aren't going to let this Committee or the Minority on this Committee or the Minority Counsel, forget that.

I'm disappointed in what I see as one party vigorously defending the President instead of vigorously trying to complete a duty to this Committee. And I'm not alone in that observation, Mr. Chairman. I would like to quote yesterday's Washington Post where writer Robert Novak comments on the standstill in this Committee:

In 39 years of watching Congressional investigations, I have never before seen members of the President's party so unwavering in defending him. Thus, they [the Democrats] have been rigorous in following the White House script on Hale.

Mr. Novak ends his article by stating:

Keeping Americans from hearing Mr. Hale's accusations under cross-examination constitutes a tactical victory for the White House.

Well, Mr. Chairman, I don't know about a tactical victory, but as a Member of this Committee, I feel that we have been derelict on one hand in the sense of not being able to obtain enough support from the other side to allow this most important of all witnesses

to be heard and that's the bottom line. We're not hearing the main witness, and we have to bear that responsibility as we respond relative to the excuse that somehow this immunity question is relevant. It is not relevant, Mr. Chairman. What is relevant is the testimony of David Hale. That's what is relevant to this Committee, and we all know it.

So I think it is probably a voice crying in the dark, but I would again ask my colleagues on the other side to allow this Committee to complete its Constitutional duty, allow this Committee an opportunity to question and cross-examine Hale and allow the American public an opportunity to judge the veracity of this man, and allow the White House and the President, once and for all, to get this issue behind them. Because it will not, Mr. Chairman, clear the air, it will leave the air stale as a consequence of the inability of this Committee to come together and have David Hale before us as he should be.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Mr. Chairman, I sit here and I listen again. We've been going here for a long time and it's been a pretty strong Committee. We've heard the exhausted cliché, "No there there." Well, I don't know what "there there" means but we've had 9 guilty pleas, 3 convictions, 4 resignations, and numerous demotions and other people awaiting trial, so if that isn't there there, I don't know what there is there. But what we are doing here today is simply perpetuating a cover-up by refusing to let this man come testify.

We're in a struggle to withhold information and to perpetuate a cover-up from day one. We aren't granting immunity by refusing to let David Hale come here, we aren't granting any favors to David Hale, we are granting the favor to Bill Clinton. That's who we are granting the favor to. It's not something we are doing for David Hale. It is the further protection of Clinton. It is time to come forth and quit the cover-up.

Mr. Chairman, I have one thought on it. If Mr. Hale will agree to come voluntarily after the statute of limitations runs on his charge, potential State charges, this would be some time after July 6th, now if you're saying you're not trying to protect a cover-up and protect Bill Clinton, if you're saying David Hale is really the target you're trying to go after, why don't we find out if the Committee would agree to allow David Hale to come after July 6th, if he will come voluntarily.

The CHAIRMAN. Well, the Senator propounds a question that has really become academic as it relates to this Committee, because we will be finished on the 17th. It does not become academic, however, if there are other Committees of the Congress who want to pursue that. We will not, as the Special Committee on Whitewater, because our charge is very explicit, and on June 17th, we will be out of business.

Of course, there is always the possibility that another Committee of the Congress, either in the House or the Senate, can consider the question. Maybe Mr. Hale's lawyer and Mr. Hale, at that point in time, would not seek the so-called use immunity, given the fact that he apparently has received immunity from other prosecutions, and it would appear that the only question outstanding—and I

don't know for certain—is that question with respect to the Arkansas prosecution.

But as it relates to this Committee, I can tell the Senator while the proposition is quite intriguing, we will be terminated and we will submit our reports on the 17th. Unfortunately, it would appear, we will not have the benefit of that opportunity. As Senator Murkowski indicated, one of the shortcomings will be that a key witness will not have the opportunity to testify and to be examined by this Committee, and by the American people in terms of what he may or may not have to offer.

But I thank the Senator for his inquiry.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes. Just a brief comment about David Hale, and that is that his counsel makes clear it is not only the State prosecution but potential Federal questions, and so that he wants immunity not only from State but also from Federal prosecution. I think the two-thirds rule is going to apply and I think this Committee properly makes the judgment not to give immunity.

Since this is going to be the last meeting, Mr. Chairman of this Committee, which I voted against creating, I think we ought to ask ourselves where we are, what have we found.

I think there are two basic questions. The first question: Was there an abuse of power by Bill Clinton as Governor of Arkansas? I have seen no evidence to suggest there was an abuse of power. The second question: Has this whole matter been mishandled by the White House? I think here you have to say there was a mishandling. They would have been much better being forthcoming, providing all the material right away. But that seems to me, after all the hearings, all the depositions, that's kind of where we are.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Let me recognize Senator Mack. He hasn't spoken yet.

OPENING STATEMENT OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

First, let me say that I am surprised and disappointed frankly with my colleagues on the other side of the aisle. When we began these investigations some time ago, I think there was a recognition by most of who were observing that we were acting in a bipartisan manner. That there truly was an effort to get to the bottom of things. But it seems to me, again from my observation, that the more that has come to light, if you will, the more that we have focused on the target, there's been less cooperation.

Now, we're down to the point where we have an opportunity to hear from David Hale. And while my colleagues on the other side of the aisle want to keep saying that we want to give this man a pardon, that we want to wash him in immunity, that simply is a false statement. We are talking about a use immunity, limited immunity, specific immunity. And so they are raising a smoke screen in my opinion.

So again, I say, I am disappointed because I believe that they have now been drawn into, in fact, assisting this Administration in covering up what has happened in this Whitewater affair.

As a result of the action by my colleagues on the other side of the aisle, we will be denied and the American people will be denied the opportunity to listen to David Hale on two conversations that were not covered in the trial. And because of the cover-up actions of the Democrats, we will probably never have sworn testimony about those meetings.

A moment ago, my friend from North Carolina responded to the no there there, and I, just to make the point once again, I would remind folks that Roger Altman resigned as a result of these investigations. Jean Hanson resigned as a result of these investigations. Two others have resigned. Nine individuals have pleaded guilty. Three others have been found guilty, as we all know, from the actions in Arkansas.

It is interesting again to me that at a moment where I thought that things could, the development of the billing records on the third floor of the White House, that my colleagues on the other side of the aisle would have said, you know, there is something very, very strange here. We really need to assist the Committee in getting to the bottom of this. Instead, they took the other course and have been, in my opinion, participating in what I have referred to for a long period of time now as the Clinton Administration's active engagement in a continuous effort to interfere with the investigation of this Committee.

So, I say as I began, Mr. Chairman, I am disappointed in my colleagues on the other side of the aisle. I expected more from them in my working relationship with them over the years than what I have seen in these last two hearings.

Thank you, Mr. Chairman.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. I don't know if any of my other colleagues want to speak, but why don't we recognize Senator Shelby, and then I think we're at the point now where we have discussed this. I think people know our feelings on this, and it would be my intention then to move to a vote.

Senator Shelby.

Senator SHELBY. Thank you.

Mr. Chairman, I want to thank you for your leadership on this Committee, this investigative committee. It has been tough and it has been arduous, but we have had some successes here. We have also had some failures, such as what is going to happen today unless somebody changes their mind.

So when one of my colleagues said, yes, where are we, well, it's about 3 minutes to midnight on this clock in this Committee. And this is going to be the last meeting, I suppose, Mr. Chairman.

In this Committee several months ago, some of you might recall that I raised the issue that there were parallels between this Administration's action and the Watergate era of President Nixon. Make no mistake about it, there were a lot of parallels. You can get your own list. I have a list of them and I won't bother the Committee with them now. But think about the parallels of stonewalling, obstruction, continuing to obstruct committees, and it is

continuing to obstruct investigations. This Administration's done a good job on stonewalling. I have to give them credit for it. But the parallels are there.

Look at what has happened in the last few days, if you don't think there are parallels between this Clinton Administration and the Nixon Administration. When you look at when they requested the nearly 340, 339 FBI background checks on people including the former Secretary of State, Jim Baker, including the former Chief of Staff at the White House, Kenneth Duberstein, even James S. Brady, who was President Reagan's Press Secretary. Think about it. Raw material, three or four hundred.

That is what President Nixon did. You know it and I know it, among other things. And you know what the outcome was. He was wrong, and this Administration's wrong.

Now, my colleague and friend from Nevada, Senator Bryan, he mentioned something, paraphrasing, that this is all about politics. Maybe, maybe not. Isn't it deeper than just politics? Isn't it more serious than just politics? Doesn't it go to the very heart and soul of this Administration or any Administration if you're involved in possible obstruction of justice, stonewalling, getting the FBI to do all these raw checks on things?

There's a lot missing in this Administration, and I think that the judge of this Committee's vote today, and the judge later of the Administration's action will be history, will be the American people. But I believe it's not just about politics, it's about letting the American people know, to the best of our ability, what's going on.

Thank you, Mr. Chairman.

Senator SARBANES. Mr. Chairman, just let me say very quickly, first of all, on the matter that's pending on the House side, Chairman Clinger himself has said that he's not sure exactly what happened and that's what they're trying to find out, but there's been an explanation offered that is not insidious and that has it as a perfectly honest mistake, and we'll discover that. I gather that Director Freeh is now looking into the matter and is expected to give a report by the end of the week.

Our issue here today is whether we should give Hale immunity and therefore protect him from any possible prosecutions for other misbehavior, and it's our view that that ought not to happen, that we have his testimony from the trial, we have extended statements that he's put on the public record, and that the giving of immunity is no light thing, and that I think frankly, as Hale's lawyer's letter indicates, that there is a very carefully calculated effort on their part to gain immunity from the Committee, in other words, to manipulate the Committee to their advantage, and I don't think we should be party to that.

The CHAIRMAN. Senator Hatch.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Well, Mr. Chairman, I will only take a second.

But if the prosecutor in Arkansas, for instance, is a good one and is pursuing a legitimate prosecution instead of engaging in political retaliation, then he will can his evidence and will avoid any *Castigar* problems. I don't think there's any question about that.

As I said last week, Whitewater is sitting over this Presidency like a cloud. It is threatening the success of his Presidency. We want to dispel this cloud, the American people want to dispel this cloud. And the only way we can do it is to try and get to the truth.

I would just say one other thing. As Justice Brandeis once put succinctly, "Sunlight is the best of disinfectants." Frankly, I don't see why the other side is even concerned about having this man come. You'll have every opportunity to question, and it would be a good way of putting this thing to rest one way or the other. I just can't imagine, you know, if you look back at Watergate, you look back at Iran-Contra, I was on the Iran-Contra Committee, there was bipartisan support for use immunity.

All I can say is that I hope my colleagues on the other side will vote to do this, but if they don't, I'll never understand it.

The CHAIRMAN. Then I move the adoption of the Resolution. The Clerk will call the roll.

The CLERK. Chairman D'Amato.

The CHAIRMAN. Aye.

The CLERK. Mr. Shelby.

Senator SHELBY. Aye.

The CLERK. Mr. Bond.

The CHAIRMAN. Aye by proxy.

The CLERK. Mr. Mack.

Senator MACK. Aye.

The CLERK. Mr. Faircloth.

Senator FAIRCLOTH. Aye.

The CLERK. Mr. Bennett.

The CHAIRMAN. Aye by proxy.

The CLERK. Mr. Grams.

Senator GRAMS. Aye.

The CLERK. Mr. Domenici.

The CHAIRMAN. Aye by proxy.

The CLERK. Mr. Hatch.

Senator HATCH. Aye.

The CLERK. Mr. Murkowski.

Senator MURKOWSKI. Aye.

The CLERK. Mr. Sarbanes.

Senator SARBANES. No.

The CLERK. Mr. Dodd.

Senator SARBANES. No by proxy.

The CLERK. Mr. Kerry.

Senator SARBANES. No by proxy.

The CLERK. Mr. Bryan.

Senator SARBANES. No by proxy.

The CLERK. Mrs. Boxer.

Senator BOXER. No.

The CLERK. Ms. Moseley-Braun.

Senator MOSELEY-BRAUN. No.

The CLERK. Mrs. Murray.

Senator MURRAY. No.

The CLERK. Mr. Simon.

Senator SIMON. No.

The CHAIRMAN. Accordingly, the two-thirds vote has not been achieved. The Resolution, therefore, does not have the required two-thirds vote. It fails on the vote of 10 ayes and 8 nays.

Senator Faircloth.

Senator FAIRCLOTH. Mr. Chairman, on a totally other note, I want to thank you for your leadership during this long, and it has been a long and complicated process. You have been fair and judicious throughout the proceedings, and in most cases, patient. But I do want to thank you for the manner in which you conducted it.

I would also like to extend my thanks to the entire Committee staff. All of you have done a great job. Mike Chertoff, Bob Giuffra, Alice Fisher, Viet Dinh, and all of the staff that have made it work. They have been here long hours and tirelessly made these hearings work and prepared and presented the facts to the American people. I want to give my thanks to all of the staff for getting out the facts as best we could.

The CHAIRMAN. Thank you very much, Senator.

I want to thank you for bringing this to our attention, because I think we do owe the staff a debt of gratitude on both sides, Majority and Minority. It was not easy, a lot of conflicts, a lot of interest, a lot of pushing and pulling. They've worked under extraordinarily difficult circumstances and I believe that they have done an excellent job, given the circumstances and given the limitations placed on them. So I concur and I thank you for indicating this publicly.

Senator Sarbanes.

[No response.]

The CHAIRMAN. There being no further business, the Committee stands in recess.

[Whereupon, at 11:20 a.m., Tuesday, June 11, 1996, the Committee was recessed, subject to Call of the Chair.]



en
ed

I
is
i-
at
t.
ee
ob
le
se
r-
g

se
r-
t,
y
l-
d
y.

ee
t.

BOSTON PUBLIC LIBRARY



3 9999 05577 658 5

ISBN 0-16-055512-4



90000



9 780160 555121



